LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, PUBLIC WORKS AND TERRITORY AND MUNICIPAL SERVICES

(Reference: Inquiry into draft variation to the territory plan No 306: residential development, estate development and leasing codes)

Members:

MS M PORTER (The Chair)
MS C LE COUTEUR (The Deputy Chair)
MR A COE

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 13 JULY 2012

Secretary to the committee:
Ms V Strkalj (Ph: 6205 0435)

By authority of the Legislative Assembly for the Australian Capital Territory

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Amended 9 August 2011

The committee met at 10.33 am.

STRAW, MR VIVIAN, President, Planning Institute of Australia, ACT Division
SINCLAIR, MR HAMISH, Director, Planning Institute of Australia, ACT Division

THE CHAIR: I declare open this fourth public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services on draft variation 306 to the territory plan—residential development, estate development and leasing codes. The committee will be holding three additional public hearings on this inquiry. Details will be available on the committee's webpage or through the secretariat.

On behalf of the committee, I would like to welcome representatives of the ACT division of the Planning Institute of Australia to the table. Thank you very much, Mr Sinclair and Mr Straw, for appearing before us today. I would like to draw your attention to the protections and obligations afforded by parliamentary privilege on the blue card in front of you. Can you confirm for the record that you understand the privilege implications?

Mr Straw: I do, thank you.

Mr Sinclair: I do.

THE CHAIR: Thank you. We have your submission, thank you very much. Would you like to make some opening remarks?

Mr Straw: Thank you. I think we probably will not take all of our time, depending on questions that you have got for us. The statements that we have to make, I think, are relatively short and to the point. Thank you very much for inviting us to speak. The two of us will be representing the ACT Planning Institute on this matter.

I will open with a couple of fairly brief and to-the-point statements about what we think needs to change or needs to be addressed in the documentation. Then I will hand over to Hamish, who will talk about some of the details, how it all works and how it all fits together. At the end of that, I will sum up fairly quickly for you and we will be open to questions.

I think our biggest concern is that we are worried about—planners get themselves very involved in the communities that they work for and live in. That is possibly why we become planners as well. We are very interested in the place that we are at. But the concerns that we have rest around how this document is put together and how it addresses some of the issues around specifically residential development.

I think in the back of our minds is that it does not answer the question: what is the vision? It does not set out for us where we need to go. It does not say, "This is the grand vision for Canberra." So I think we are very concerned that really what it is likely to do is just create another blubberland or another blandville around Canberra. It does not really differentiate each of the places.

What we think we need to remember is that we are planning for people and we are planning for people to have a better lifestyle than we had when we were younger. We

want to leave the place better than it was. There seems to be a fear amongst planners of creating things that really stand out, that really make a difference. A lot of it seems to be going down a route of compliance.

So we would address a lot of our concerns around the issues of whether or not this is about compliance or whether it is about differentiation. We think that the planning codes should be about differentiation. They should be about creating new places, individual places, different places. What this does not do is that. What it does do is create a compliance regime.

For societies to develop, to continue to grow, to continue to change, which is really what happens in societies, they need to be innovative. The economy needs to be active. They need to be diverse and there needs to be constant innovation about how we do things. To do that, we need to create incentives for people to be able to do things that are new, different and outstanding. That difference creates differentiation, adds to diversity.

Then we get to situations like we are facing at the moment. Climate change is obviously one of them but one of the other big issues that we are facing in society is the car and how the car is starting to—well, is starting to?—it is really choking the city and community health is dropping off fairly rapidly. So we face a situation where our children will not have the life expectancy that we have if we continue to build cities the way we are building them.

The way to overcome that is to create a vision and then provide room for people to differentiate and then have a look at what works and what does not work. Planning is not a refined science. It is an art. It requires different views. It requires a balance of a whole range of things. It requires balance around how we handle the economy, how we handle innovation, how we create connections between various parts of the city, about how we develop diversity.

All of that comes down to what I would call a governance issue. It is not a government issue; it is governance. It is about where we lead people; it is about where we give them freedoms. A lot of that in our society goes back to 1688, to the Glorious Revolution, to the idea that people suddenly had representation and they could do things.

I think what we are concerned about in all of this documentation is that it is really just setting a very similar set of rules that repeat themselves across each of the residential areas. There are rules that are basically meaningless, do not have direction to them and do not provide a foundation for people to innovate. That is the thing that probably worries us. With those words, I am going to ask Hamish to go through the document.

THE CHAIR: Thank you, Mr Straw.

Mr Sinclair: Thank you. I guess, broadly, picking up on Viv's comments there, the generality and simplicity of these rules, on the surface, appears great because it gives you a high degree of flexibility. But it is a point of flexibility that is beyond actually being meaningful. I will work through the submission that we have given you. I am mindful that to do this justice we could triple our submission.

Our first point is that, of course, we have submitted previously on the first version of these codes in 301 and 303. We recommended at that time, due to their drafting, that they be withdrawn. When we reviewed the initial replacement variation 306, it would be fair to say that we were disappointed and similarly sought that it be withdrawn. We are now in the presence of the recommended version of 306 following the ministerial reference group.

Some of those key elements were not picked up from that group report and in many respects we did find ourselves in the position of recommending this variation be withdrawn and recommenced from the start, mainly because it does not achieve good planning outcomes. It is drafted in a manner that will not deliver the expected outcomes that are talked about.

Whilst it talks about a grand vision in terms of promoting solar access, the reality is that it will simply not deliver that as an outcome. The language around that, the ambiguity of the language around all of the codes and the objectives, leads us to conclude that not only will you not get a vision or be able to consistently deliver an outcome that the community expects or that developers can rely on and invest in, or that the government can then take to the community as a positive contribution to the planning of this capital city, you are also likely to find a blandness and—I am looking for a polite word—a simplicity of design response that really does no justice to this city and to its people.

Specifically, to try and shorten this we have given you two key areas to look at. One is that we have looked at specific code matters. There are too many failings to list in our view, and that is a problem. We are in this position now of having to come to you with an edited highlight of one example. We may talk at length on that and there will be rebuttal et cetera from the authority in regard to that one issue. But the problem is endemic of the entire code, of all of these codes.

It is also a problem with the system and the way in which it is being reinterpreted from the initial act. The removal of intent from the codes means that the rules and criteria operate individually of themselves for no purpose. That is a fundamental failure in any planning system. That the objectives are seen as guidance, as they should be, is a valid point, and it is recognised most recently in the Supreme Court case over Giralang shops. But in that decision it was also recognised that the rules and criteria operate independently. So an awful lot of weight in the ACT planning system rests on the rules and how they are drafted. If they are not drafted properly, you simply have a dysfunctional planning system.

In respect of the second part of what we have got here, we put our mind to two things: providing you with a solution, particularly in regard to solar access, because we understand that the government has a strong interest in achieving a solar access outcome. That was a key component of this variation. So we provide you with an opportunity to revisit the criteria. But we have also provided you with a suggestion that the process of this plan-making exercise here, the variation process, is incredibly time intensive and costly to the community, to bodies such as ourselves and, of course, to yourselves as well. I fear the amount of material you have had to digest to get to this point in time, only to be faced with recommendations that you throw it all out and

start again. That cannot be a good place to be.

We are suggesting an alternative, that in future there be some circuit breaker on the process, one that need not be necessarily in the legislation but simply administrative practice, that enables both submitters and the planning authority to negotiate and mediate outcomes, rather than the adversarial nature this process currently operates under whereby we tell you in our evidence and submissions that there are problems and then the planning authority comes along after the fact, hits you with a rebuttal as to why they are not problems, and then we come back to you with a further submission saying that there are still problems and then they come back with a further submission and rebuttal saying, "No, there are not."

This is not a way to mediate and negotiate a solution. We think that there needs to be a different way. There are other mechanisms in other states and territories that do this kind of role. Obviously, at some point it has to come back to this committee because ultimately you are deciding and recommending the final form of the variation for the minister to consider. We see the need to have a process that inserts that mediation-negotiation between the point at which submissions are made and the point at which the planning authority then puts forward a recommendation version because, as I said, we are currently in this position of finding ourselves no better and no further advanced from the initial variation 301 and 303 of two years ago. An awful lot of water, time and cost have passed under the bridge, as it were, for no benefit. We are very frustrated.

Anyway, with regard to our submission, the summary has identified that concern. The detail of what we are primarily concerned about is that the manner in which these new codes are being drafted is not consistent with the DAF model and best practice. In the area particularly of the language used, there are also concerns regarding the zone objectives and their language. I will start with those. I do not know whether you have got our submission there but on page 5 we have actually listed the residential 1 zone objectives.

Residential 1, of course, is the lowest density, most sensitive urban environment for residents and the community. We have looked at those objectives as the benchmark for a point of differentiation from that point of complete sensitivity through to residential 5 being a high density, high intensity development zone where you are going to get a lot of development opportunity. We have looked at the objectives. From the table on page 6 you will see that really in some cases where you have 10 objectives in a zone, only three, frankly, are relevant to that unique zone characteristic.

In fact, pretty much at least six of these objectives are standardised from residential 1 through to residential 5; so there is no real point of differentiation. They may well be applicable, but they are not relevant to identifying the distinctive nature of the zone. Therefore, as a guidance, they are meaningless. They are relevant to the extent that the sun comes up and the sun goes down. In fact, it gets worse when you start to look at some of the high-density zones where there is only one objective that actually differentiates between the zones. That is that third component, the medium to high zone residential characteristics and objectives where there is only one objective that is a unique identifier for those zones.

We note that in New South Wales and elsewhere, zone objectives are used. Sometimes there are five or six. Here we have 10, but if you look at the five or six that are used in New South Wales, Victoria, Queensland or wherever, you often find they are quite similar, but there are subtle differences in each. Those subtleties do not exist here. They are literally verbatim in every zone. We have a concern that that is not going to give you any nuance, sensitivity or opportunity for innovation when it is a generic statement.

We note also, and I think this was picked up in the *Canberra Times* only yesterday from the Gungahlin Community Council's comments, that zone objectives really need not only to differentiate between each zone, but also within the zone so that there are differences between areas. The residential 1 zone contains a very large part of the territory's urban fabric but there are very clear distinctions between the north and the south and inner and old or new suburbs that are also zoned residential 1. They are different in terms of their size of block, size of dwelling, and the community and the social fabric within those areas.

Some of them have heritage underpinnings that are established with the initial Griffin plan thinking. Others reflect more recent trends in planning thought, very different planning underpinnings and theories for those same zones. So there needs to be a thinking about how you differentiate that. This does not achieve that. It absolutely does not achieve a differentiation between zones and the unique characteristics of areas within those zones.

It is disappointing to recognise that the new zones being developed in Molonglo under the same framework in theory should be able to deliver the same outcome as one of the heritage inner city areas because they are zoned the same as residential 1. Clearly, they are not. So the delivery mechanism is different. Inversely, that means that you have the opportunity to consider that what you are developing there at Molonglo is how Reid or Campbell or somewhere else might be developed.

Not surprisingly, even the Gungahlin residents themselves find that a concern where they are at the front of leading or innovative planning being constructed right now. It is not surprising that inner city residents are concerned for their suburb's character and definition when the objectives are so generic as to be meaningless, other than at a very high level. As noted, those high levels, like sustainable water use, are already implicitly there in the act. The objective of the act states that you should have these sustainable outcomes.

Similarly, the plan at a very high level and the spatial plans seek to reinforce the desire to have solar access—these broad principles. They are already there. They do not need to be reiterated down into the code and the territory plan in such a generic way. They actually need to be added to and built on. The building blocks are there in the act and in the strategic planning documents. At the territory plan level, which is one step below in a hierarchy of planning documents, objectives should build on that to enhance the point of differentiation within a zone as well as between zones. These do not, as I said. Our table clearly shows that really you could get rid of all of the zone objectives and just have the three distinct objectives in some cases, only one for a zone, and that is really the only one that is relevant.

With regard to density, we understand that variation 200 established a very distinct separation of residential suburban fabric from inner suburban core, which is a development zone. Recent changes to the codes actually deconstruct that to a point where the certainty that was in the market about where you could develop in terms of those suburban core areas has been lost. It seems quite odd that you would allow that unpacking of a previous variation.

It is also notable that although that variation was done under a different planning framework, it set out area-specific policies—again, objectives for zones within zones. In the translation of that work to the new planning framework for the new plan, they became the intent in codes. You will see them in some of the codes that still retain them. The parentage of the intent was actually the area-specific policies of the previous plan.

Currently, we are in possession of a letter from the planning authority that says that intent is irrelevant for their consideration of the rules of criteria because intent is not in the act. So the planning authority has decided that it will remove intent from the codes. This is removing policy that the government has previously agreed to under variation 200, policy that uniquely identified points of differentiation. This essentially says, "We are now going to strip out from the code any way in which you are going to get uniqueness, innovation or creative responses relevant to a location."

In other words, the rule that applies for a residential development in one location can be applied exactly the same way in another, which comes to my point: if you can do it in Gungahlin you can do it in the inner city suburbs that have a heritage value, and it would be a completely different planning framework underpinning their design. The reverse is not true. You cannot translate the old provisions into the new areas. I guess that is one of the intentions, particularly given that the inner city areas are acknowledged as having great landscape and streetscape character.

MR COE: Can you envisage people taking advantage of that opening?

Mr Sinclair: Absolutely.

MR COE: In the initial term, I mean.

Mr Sinclair: Yes, to the extent that anywhere there is an ambiguity is an opportunity for a developer. Where there is an ambiguity there is a difficulty in defending a line of good design because it becomes a subjective decision of the individual person deciding the application. That really means you have the opportunity to challenge that legally, thus you go to the ACAT. That also imposes, of course, costs, and there is a whole issue there around equity in terms of community versus developer when it comes to challenging and fighting legal battles. Again, that is another concern of ours, and it is in our submission.

But just to get back to the density issue, there has been an attempt to rationalise some of the distinct densities sought in the zones. It is a first step and we applaud the authority for doing that. However, it does not go far enough. We contend that that should have been the start point, not an end point. It is an end point after two years of multiple submissions and community and profession and industry concern about the

framing of these codes and the language in them. This is why we keep coming back to the point that we think this variation should have been withdrawn and started afresh.

With regard to the rules and criteria, again, we are concerned that there is an over-reliance on mandatory provisions. I believe we have mentioned that around almost half of the provisions and rules are mandatory rules. That makes it very difficult for creativity when you have mandatory provisions. The premise of the code track is that you can comply with everything, but some of the consequences of the mandatory provisions are working against good and innovative design response. We have identified in particular one that relates to parking for granny flats, habitable suites and relocation dwellings—rules 22 and 23. That is a mandatory provision.

It is quite conceivable that you would have a supportive arrangement where you might have an invalid child coming out of care and being moved into a home environment where you need that extra habitable space. It is a sort of transition, and that person would not need or be able to use a vehicle. However, you are still forced to provide a vehicle space for them. If you actually put your mind to it, you can see there are a number of situations where a granny flat does not actually require provision for a car, and yet it is a mandatory requirement. You are forced to refuse the application.

On social grounds and having regard to the unique situations of an individual, you may see a completely justified reason for there being no need for that provision, but you are going to have to say no. There is no opportunity to justify it. There is no opportunity to look for an offset or some other mechanism where, in the future when the house changes hands, that provision can then come into play. That is all simply too difficult. It is mandatory—you must refuse the application or else you must provide a car park for somebody who is not going to use it.

That aside, you also then have the issues of increasing your impermeable surface area and the environmental impacts that flow from that—the embedded carbon footprint of concrete that you do not necessarily need or want. A whole host of issues arises. In a performance measure framework you look for opportunities to innovate and allow flexibility for the community, the developer and the planning authority to say: "You know what, this is a unique circumstance. There should be a way out of this. We don't really want to say no but, unfortunately, the way these rules are structured, we have to." Again, that over-reliance on mandatory is a counterproductive mechanism for innovation, creativity and design response.

We have gone through a number of these sections. Probably the other key area I want to talk about is the desired character. Again, this is reiterated by the community but it is one that is dear to the Planning Institute's heart. We have advocated most strongly within the minister's reference group for this outcome. We are of similar mind, I believe, to the landscape architects, the architects, potentially the development industry through the Property Council and possibly even the community groups in one of those rare occurrences of alignment. These rules do not engender desired character in a way that can be applied to the uniqueness of areas. They create a generic framework that sees the same landscaped outcome across the entire urban fabric. That is not a good planning outcome and that is why we have made the statement that this is not going to deliver good community outcomes. We can see in this one aspect alone poor outcomes.

The authority made an excellent step forward in its guides put out with this recommended variation. It provided photo images et cetera, and that was an excellent step forward in terms of guidance of what desired character could be. But it misses that fundamental point—suburbs are different, areas are different. We have precinct codes that recognise within certain suburbs differences with regard to community uses. Those areas also have differences in terms of their character and streetscape. There is an opportunity in a not particularly difficult exercise, though a timely one, to actually map that stuff out and provide some meat, some understanding, something you can actually grasp, both as a developer and as the community, as to what is desired character for an area. The desired character is not the same north and south, east and west, new and old. But the way this thing is drafted, it is, and that is not going to give you a good outcome.

Moving on to the specifics, there is quite a bit in here on that and I am mindful that we could almost put you to sleep with it all in the fine grain, so I am trying to just focus on the highlights. This is probably an opportunity to jump straight to one other example of the nonsense of mandatory requirements. In the single dwelling code, rule 16 suggests that a garage wall eight metres long is acceptable yet one that is 8.01 metres long—that is, one millimetre longer than eight metres—is absolutely not. I understand you have to put a line in the sand somewhere, but you also need to give yourself some flexibility to say there might be that certain situation where a development could benefit from that extra one millimetre of allowance, but that flexibility is not in there. So this over-reliance on an absolute mandatory limit is not offset by opportunities to actually allow for innovation. There might be a completely justifiable reason for why you would want to exceed eight metres in the wall length, but there is no allowance for that.

I will jump over the lease variation stuff because it is very difficult to refine that in a short manner and I will jump to the example of solar access. The summation of that can be found on page 3-a draft objective test. We looked at the objective, and it occurs a number of times in the residential codes, regarding solar access. We have no problem with the rule; the rule seems quite straightforward. But we have a problem with the criteria where it talks about "reasonable solar access". It is the use of "reasonable" that is very frustrating, in our view. "Reasonable solar access" is a point you can argue from any direction. We have previously commented on that and we have seen a rebuttal from the planning authority. There is an attachment to our submission that rebuts the rebuttal, and that is my point about finding a circuit breaker.

In this case we have simply taken the comments of the planning authority itself about what the criteria would achieve and crafted them as the performance measure. So when the planning authority says that the solar access provisions will ensure that no building is overshadowing a neighbouring block more than that cast by a 1.8-metre fence, that is the first point. That is a performance measure. You can measure that. It is also an objective that you can consider in terms of criteria. "Reasonable solar access" means nothing. The height of a fence and whether you are increasing the shadow or not is something you can actually design for and innovate around.

Similarly, there is the requirement for a minimum of three hours of sunlight. We expect that requirement. The rules actually specify the hours they should occur

between. We are not particularly concerned about that. We think there is an opportunity that you might want to allow for late or early morning sun, as long as you get three hours of it. You might have two hours of it in the morning and one hour in the afternoon, but you have still got your three hours. But we have also added the other two elements they said this criteria would achieve. The planning authority has told us what the objective and the rule is going to achieve and then included a line that says "reasonable solar access", and we have gone, "No, that's not how you write a performance measure." They have actually given you the answer for the performance measure they are trying to achieve. So we look forward to them rebutting their own commentary on why they should not apply what they seek from their own rules.

We have perhaps fluffed it a little by saying we do not know when the variation will be achieved, so thus we have given a day, month and year. We hope it will be this year. We expect it will be this year in terms of criteria C3 and C4 where they refer to a vacant date.

We have also recognised that there is a difference in blocks and, again, that was one of the core elements that the planning authority stated the criteria would achieve without actually putting it in the criteria, and this is the point. Often the planning authority is able to explain to you very clearly what it is seeking to achieve, but, unfortunately, it does not actually put that in the rules. It is only what the words say that will be applied—not the intent, because there is none, and not the objective because it is too generic to be relevant to the particular location. So the words are all you have got. And the only words you have got are "reasonable solar access". That is impossible for a designer to design to, because the designer will be designing their idea of what is reasonable. They will be designing to the request of their client—the developer—and what they believe is reasonable. That will be something entirely different, I suspect, from what the community would accept as reasonable or what the planner assessing the development might consider is reasonable. And we can all look forward to going to ACAT to resolve it—if we can afford it.

That is the draft example. There are many more that could be done. We had limited time. We did not want to try and rewrite the entire code. We have had a couple of suggestions that have unfortunately not been picked up to date. On that basis we thought we would give you one very clear example of how it can be done. We feel there should be a circuit breaker mechanism where we could sit down with the planning authority and work through the stuff together, and perhaps with community groups that have similar issues. Would it not be nice to be able to come to you saying, "We've all agreed, this is the answer," rather than: "We're coming to you with this. We look forward to the planning authority coming back to you with a rebuttal and then it's up to you to try and define what is the best outcome"?

We have not suggested alternatives to zone objectives. They really need to be written afresh. I will also pass quick commentary on the issue of reasonableness. There is an attachment there and, essentially, as you would appreciate, simply it is an impossibility. It is accepted legally as a test—a reasonableness test—and we understand that. However it is a test from the past, not a test for the future. The planning act, as it was cast in 2007, is looking to create a new system, a new way of thinking and doing and achieving outcomes. This reliance on a system that is so subjective as for it to be impossible to be consistently applied gives no certainty. That

was one of the key measurements that the initial act was promulgated under—that it would be a simpler, faster, more transparent system. The reasonableness test fails all of those. We have given you a heck of a lot of legal case note evidence that underpins our concern. If we can construct very quickly a rebuttal based on case law as to why reasonableness should not be used, I suggest there is a problem. That is why we gave you that solar access provision—there is another way, a better way.

If you have got any questions on that, I am happy to take them. It was attached simply to show you that there is a significant body of work outlining concerns, both theoretical and practical, as to why you should not endorse a reasonableness test. If, on the other hand, you are keen to do so, you actually need to put that into the act or into the code in some meaningful way that explains the boundaries of how you are going to apply it. At the moment it is implicitly in the rule but it is not actually stated how it is going to be other than what a reasonable person would reasonably understand. What are the parameters around that? Who is your reasonable person? What is the their gender? What is their education? You need to define that stuff, and current criminal law is actually going that way. It still uses an objective in the subjective test but it is also including objective components to try and rationalise it. That is around the issues of discrimination in particular. So, with that, I think we have covered just about everything briefly.

Mr Straw: I might just sum up, if that is all right.

THE CHAIR: Yes.

Mr Straw: So just going back out of the actual details, the questions that need to be asked are: what is our objection to it and why are we so concerned about the planning scheme? We have to start by saying that we have been very happy with the support that we have had from staff from the Environment and Sustainability Directorate and the Economic Development Directorate. They have been very helpful. They have been very open. They have been very professional in the way that we have dealt with this. It is also important to recognise that a number of the staff are members of our Planning Institute. So I guess what we are saying is balanced by the fact that there has been debate within the Planning Institute over this as well by people in government and in the private sector. We are not just here representing the private sector.

We have a number of concerns that come from the direction that planning is going nationally and how we think this is not meeting some of those requirements. As Hamish said earlier, the DAF model is a COAG-agreed model for Australia. It is our guiding policy, and we are very concerned that this is not a leading document in terms of the COAG model. That is one of our concerns.

As a geographer and a planner—coming from the geographical side of planning—a question that I always have to ask myself when we are looking at the preparation of planning documents and stuff is the general sort of governance question: in whose interest is this being written? Is it being written in the interests of protecting various existing elites—in other words, keeping things the same—or is it being written in favour of innovators and change?

One of the big things we are facing in planning at the moment is knowledge of a need

to change our urban structures quite dramatically from what they have been over the past, say, hundred years. The car has had a huge impact. We are starting to realise that there has been a huge impact on community health, as I said before. Also we have a generation of people coming through who are demanding a broader, more diverse scale of infrastructure in the urban environment. We have been providing a very narrow focus on what we do in terms of infrastructure.

Our feeling is that this document does not provide for innovation in the way that it should and it does not provide that leadership. That is a fundamental concern we have with it. So from that point of view, we would like you to ask yourselves the question: is this a bureaucratic response or is it a visionary document? We do not think it is a visionary document. We do not think it addresses the future.

The third question is: does the document provide for economic change, for connections, for innovation and for diversity in our urban environment? As I said earlier, change is something that is happening very constantly, and we are facing a particular type of change. Whatever we do in the future needs to be versatile, but it needs to provide direction for that versatility. It needs to try to in some ways pick winners and so on.

That is an important reason for why Hamish is saying that these rules are not written in such a way that they will deal with the issues that are coming up. What you are going to get is more and more developers looking at the document and saying, "Can I do something innovative?" and asking themselves the question, "What is the wow factor?" When they read it, do they go: "Wow! Yes, I can do that. I can be innovative in that thing." Or do they look at it and say, "Well, I've got to comply with all these rules." We suspect this document leads you to the latter.

So a number of questions: is the document a bureaucratic response or a visionary document? Does the document create an innovative and differentiated society? We do not think it does. Is there a wow factor, a leadership issue? How do we move from compliance to governance and leadership in the writing of this document? How does the planning system recognise that what we are involved in, in fact, is a series of partnerships?

Cities grow because there are partnerships between the community, developers, bureaucrats and others. To us it looks like this document is created behind a wall—in an ivory tower, if you like. It is a set of policies they do not really want to engage with. That makes it very difficult for the community and for developers and for the movers of finance and stuff to actually engage with it and to say, "Yes, we know what they are after and where they are going with it and how they are going to deal with it." Until it does that, we think that it fails the test of being a good visionary, good governance document. That would be our summary.

THE CHAIR: Thank you to both of you. We might go to some questions. I have a question. I know this is a detail question rather than a big picture question, but it is around the issue of the car parking for the granny flat or the second dwelling. Are you assuming that this person has a disability or that this aged person will not drive? Whilst I am quite in favour of us reducing the number of cars out there in the community, I think sometimes a person who has a disability or an older person who is

capable of driving is perhaps not capable of using public transport and therefore the requirement to have a car park is probably in favour of that person with a disability or that aged person.

There is the issue of the person requiring perhaps additional services brought to the home. Ageing in place, having a person with a disability being able to remain at home and not institutionalised, is important in our community. Therefore having a car space for the person who comes to deliver whatever they need to deliver in the home is crucial for them because it could mean the difference between ageing in place, or having a disability and remaining in the community, and being institutionalised. And the pressure that is on a family, maybe the caring family next door, is enormous if that facility is not there. So you end up getting an inequitable situation where the family carries the load of that service delivery and other support services being available. Have you got a comment about that specific one?

Mr Sinclair: Yes. You are right. That is a classic example of all the kinds of thinking that need to underpin the rule. Also what we are highlighting is that there are, I suspect, a range of other opportunities where that requirement is not mandatory, that you may not require it. The way the rules are written currently, under no circumstances is it conceivable that you would ever not have a car, that the granny flat person will be a car driver or—

THE CHAIR: Or receive services.

Mr Sinclair: In terms of receiving services, that is really no different from other services. If you need a car repair person to come up to your place and fix your car, or a plumber, that service delivery component is implicit in any residential arrangement. And it is not one where you would be seeing the vehicle parked there for 24 hours or 12 hours or eight hours or something.

THE CHAIR: I do not want to labour this point, but I know that there are examples where a person who has a disability actually needs the space for the vehicle to drive to their house so that they can be transported to the car and taken out.

Mr Sinclair: We are not saying you should not have it. The point is that—

THE CHAIR: I think it is interesting that if we say that this is not necessary, then over time they may need the car park and we have lost the opportunity for it to be there.

Mr Sinclair: It is not that it is not necessary but that there is no opportunity for it to be discounted if it is not required. Yes, certainly, it is understood that in most situations it would be a desirable situation to have. But, bearing in mind that the granny flat is not really seen as an independent unit—it is part of the actual dwelling—there is a shared services consideration here. But fundamentally there may be circumstances where it is just not needed and you are imposing that cost on somebody for no benefit.

Surely there should be some way in which a person can, through the planning process, say: "You know what? I really do not need this. Here is the reason why." And the

Planning Authority has that provision to say: "Yes, in this circumstance it is completely justifiable. You do not need it now. But perhaps, say, if you sell the house or somebody else comes into the environment and does need that space for that unit, then it must be provided."

MR COE: So, in a nutshell, if there is not a mandatory requirement there is an opportunity for more granny flats to be built?

Mr Sinclair: No, it is not even that; it is just that in making it mandatory you have no choice but to say no and they make the car park space, when the actual requirement may not be there.

Mr Straw: What you are doing is reducing the cost, or potentially—

MR COE: Yes, but surely there would be more opportunities to build them as well?

Mr Straw: There would, yes.

Mr Sinclair: Potentially.

Mr Straw: And more opportunities to be more innovative. Someone else might say, "We do not need a car park but we need something else."

MR COE: But next door has got a spare car park.

Mr Straw: Or next door has got a spare or we have got rear access through a rear gate or something of that nature.

Mr Sinclair: Yes, we can show through a traffic study or whatever that there is an alternative option that provides for that need should it arise, but it does not currently arise.

Mr Straw: We are not saying they do not need it. What we are saying is that, when the development comes in, sometimes there is a need to look at the individual circumstances and look at the impost that you are putting on people around that design solution. Why impose the design solution when there may well be other innovative ways of dealing with it? If somebody has got something like multiple sclerosis, for instance, you end up with a range of needs across the time that that person has that disability. They will deteriorate, basically, unless we find a cure for it. We hope they find a cure for it. So there may be a need not to put the car parking space in now but it may be needed in 10 or 12 years time or something of that nature. So there is all that innovation that just is not allowed for by having a mandatory rule that it gets built up-front.

Mr Sinclair: Or the adjoining residents might have an outside parking pad that is capable of having five cars or they might have a six-car garage and it might be an option to trade off that space against the granny flat space. All of those options are ruled out when it is mandatory.

THE CHAIR: I do not want to labour the point. I just wanted to have a discussion

about that. I will go to the other members in a minute, but the one thing that we have heard from the witnesses that we heard from the day before yesterday, I think it was, was that the desired character of course is important, as you have discussed. Other members may not agree with me, but it seemed to me that they were saying that they wanted the certainty that was created by compliance because they did not want too much chance for innovation.

What they saw was some fairly ugly examples of innovation where they lived, in that they have got something being built and they reckoned it should have been required to be even more compliant. They said, "Look at these examples of these dreadful things that have happened in the past." I think they were very uneasy. It seemed to me that they were very uneasy about innovation in that it might create this situation where their own enjoyment of their own home in that street was reduced in some way; the amenity was reduced.

Mr Sinclair: I think that is a very valid concern. It is one that we have. From our perspective, they are constructing all that. We start with the rules and look at the rules and we do not think the rules are going to give them that certainty and that, if you write performance measures such as the example we gave of the solar stuff, we can write that kind of character identification to the performance measures. So there is a list of things that need to be addressed as to what the desired character might be for a new development to design against and take into account. Currently there is no real guidance there and when you look to the objectives it is even less relevant.

So there is that uncertainty around what these rules will actually deliver. They are currently drafted in such a way that there is no certainty and so naturally communities, where there is that uncertainty, are going to act against them. Until we can provide them with a clear outline of what is expected and what the transition will be and how it will be managed over time, not unnaturally they are going to be reactive to it. And that is what we are seeing.

THE CHAIR: You drew a comparison between, say, Gungahlin and the inner north or the inner south, and maybe we could talk about Molonglo as well, as a greenfields area. Does that mean that every time we open up another greenfields area we need another set of rules for this desired character for this new estate?

Mr Sinclair: Yes.

THE CHAIR: So we have to revisit it every time?

Mr Sinclair: I think you do, because, as each estate is being designed and developed, the thinking, the planning theories that underpin it, are quite different and that is why they all look quite different. If you look at Tuggeranong as a design and an outcome, it is quite different from how some of the inner city areas are being developed and it is quite different from how Gungahlin is being developed. So there is a transition and a change of thinking in design and also there is the simple matter of time. Things were built in the 1970s, the 1980s and the 1990s and we are now in 2012. In 2020 we will be looking back and going, "That is an interesting design." But we may not like that. We might want to do something different. So there will be a relevant character description for that future estate, whatever it might be.

But it does not mean that you should not encourage or protect or provide for the existing character and design principles that were around those original estates unless you really want them to transform into that new development. But, if you are going to do that, you need to have a conversation with that community, engage and get their support. That has not happened. Variation 200 went down that line of trying to engage the community and it restricted the development to core areas because it recognised that it was a very hard area to deal with. This has actually unpicked that and made it more open as a consequence, reintroduced the uncertainty.

Mr Straw: If I could just add to that, there are a whole range of issues in there. One comes back to this governance issue of who you are planning for. Are you planning for the past or the future? There are always going to be what I will call elites, people who have moved into a place, developed it, developed their gardens, their homes, and like that character, and then do not want any change to happen.

The plain fact of the matter is that the buildings that we build have about a 60-year life span and over time you are going to have to redevelop that. And if you are going to make that economic for people to redevelop you have got to think of other ways of doing it.

But other things lie on top of that—transport. The way we transport people to and from work is going to change over time. What we have done in the past does not allow for public transport very well. So we need to increase densities in some areas.

Neighbours are always going to turn around and say, "We understand why you are doing that but we do not want it here." So there has to be some leadership from government to say: "We do have to innovate. We have to find ways of doing it." And maybe what you do is enforce setbacks and keep streets looking the same so that when you go to dual occupancies or two or three units in a place you actually start to maintain the character or build a new character and build a new vision in a locality. But you have to do that on an individual, place by place basis.

The other thing is that we do not look too much at architectural values in the planning system. Perhaps in Canberra there is an opportunity to do that, to assess the architectural value. That could be written into the planning. But that is a political decision to do that, to set an architectural style for an area or something like that.

When you do new areas, certainly in New South Wales, in Queensland, in South Australia and in some parts of Victoria, there are places where a developer will say, "This is the architectural style." If you look at places like Thredbo, for instance, Thredbo is a place where, if you want to redevelop a place, you get it approved by Thredbo's architect first before you go through to the consent authorities. So you can do things like that. They are done elsewhere. But the architectural overlay becomes another overlay in all of that.

Mr Sinclair: Indeed. I just reiterate those two points. The current design for Molonglo is specifying a built form outcome. There are plans and master plans that show built form outcomes. That is the architectural palette that is being applied. That is quite a different palette to what has gone before, and subsequent palettes will be

different. So there is that opportunity to actually pick up on that design and bring it into the system. There is work there. Again, we feel we are often pointing out the fact that this is not a matter of creating stuff; it is actually making use of stuff we have already got and bringing it into the plans, instead of covering it with a generic term or process.

The other thing is that I agree that there is concern in the community about how developments happen, but I think that is based on sitting through a number of community group meetings and again this reference group that was formed around the variation, the inner city community council. I am probably talking out of turn here, but they were very much of a mind that they agreed with the requirements and the need for density and infill and they were supportive of that. And I think you will find there are probably submissions to that effect.

Their concern is how it is being done. It is not why; it is how. And the "how" you have to unpick as to what are the mechanisms we can put in place in delivering this that will give them that certainty and that comfort that the design response is going to be consistent with their character—not exactly the same, not reconstituting 1960s suburbia in the form it was, but how you transition from that to what it is now and still contain those key elements that were there then and are there now.

Often it is only the streetscape. They may often accept the built form outcome as being radically different, if you can show that the streetscape and the interface between the public realm and the front of the building are not dramatically, radically different. The problem is that currently the rules allow for a radical reinterpretation and that is where the community is going: "Hold on. I agree with the principle but not the delivery."

Until we understand that and we put some rules in the plan around that, how that delivery is being designed, we are going to find ourselves in a situation of having the community going: "I love the idea. I think it is valid. But I do not want it next to me because it is going to look like the thing down the road that is a completely ugly thing." Part of that will be architectural and part of that will be the planning rules allowing it to happen.

Mr Straw: Some cities introduced the idea of place managers. They are called different things in different places. A place manager might be an architect or somebody who just looks after the public domain and actually takes responsibility for that area over time. So they have quite a lot of authority within a planning or an engineering group within a city council and they actually manage the development of the place and liaise with the community and talk with the community about how all those guidelines are going to be delivered.

That allows places to have a lot of differentiation, because you have a person looking after and responsible for the development of the suburb over time and then somebody else doing another one. That person relates to that local community, manages the rules, manages the engineering, the whole thing. That is another way of doing it. But you do have rules that have been agreed to by those communities to do that.

THE CHAIR: Where does this operate?

Mr Straw: Jacqui Lavis, who you would probably know, used to be a place manager in Melbourne, for Melbourne City Council. She looked after a section of North Melbourne for a long time, a part north of Melbourne city where there were a lot of restaurants and places like that. She actually managed the development outcomes, and business and that sort of stuff around there. So that is one example that I am familiar with.

MS LE COUTEUR: Can I check that I have interpreted this correctly. You think this would be better off if it were totally withdrawn than otherwise?

Mr Sinclair: Yes. However, we are realists and recognise that after two years it is probably not the best outcome—

MS LE COUTEUR: It is not the most likely, possibly.

Mr Sinclair: to go back and tell everyone that we got it wrong, and start again. We have given you one example which we think is a quick fix for the solar solution. In our documentation we might have identified 26 instances where it could be adopted as a straight translation. There might be some further work. In terms of the suggestion around plan making, you might direct the authority and others to try and resolve something that works better and come back to you with a solution. I think we are in the situation now of picking a few winners, unfortunately.

MS LE COUTEUR: You talked about the idea of having deliberations and a circuit breaker. What went wrong? I thought that was the whole idea behind the reference group. The community got quite upset and the community and professional groups all met for a period. That was the attempt, I thought. Why didn't it work?

Mr Sinclair: A reference group that is convened by the minister and chaired by the planning authority is hardly independent.

MS LE COUTEUR: The argument could be: if you wanted independence then why didn't you do it? If the issue was that the government was involved then—

Mr Sinclair: It is around the structure and organisation of the group. It was organised with the chair being the planning authority. The planning authority prepared the responses to the group and the group commented on those responses. It was also a group that, when it first met, was allocated three meetings to resolve what clearly in front of you is a substantial body of work and by any stretch of the imagination is an impossible task. That they were able to leverage a fourth meeting shows you that even the planning authority recognised it was a fairly tall task to knock over all the issues in three meetings.

Primarily, when you have a need at a governance level to find a mediated solution or negotiate an outcome, the negotiation really needed to be between the planning authority and those submitters, with an independent chair overseeing it. Unfortunately the construction was otherwise; thus you had the agency responsible being criticised for its work and providing a response to the group criticising the work. It is hardly an environment to achieve a good outcome.

Mr Straw: There is a big difference between mediation and engagement, and a partnership sitting in a group trying to find solutions and a group where you have two different sets of views that are just being banged off each other. I was not involved in them, but the reports and comments that I got back were that it was very much a matter of two groups of people sitting on opposite sides of the room throwing different things at each other, rather than an independently mediated system where people sat down and said, "Okay, what are the issues, what are likely solutions and how can we work through to getting to a solution that is going to be good for the city?"

Mr Sinclair: That said, there was a degree of consensus. All the groups present were very much focused on finding solutions. So it was not purely an adversarial position; there was a high degree of agreement that solutions should be sought. I think there was a degree of consensus on the outcomes. So from that perspective it achieved an outcome. But whether it achieved one that was going to resolve this, clearly it has not because you have the submissions in front of you saying, "Sorry."

MS LE COUTEUR: Looking more broadly at consultation with the community as a whole, do you think it was reasonable consultation?

THE CHAIR: There is that word again.

Mr Straw: I do not know how aware you are of different types of consultation, but to us it was about providing information and then getting responses to that information. So they are information and response processes, which I suppose is a form of consultation, but an engagement process would be much more open. It would be a matter of sitting down and saying: "Okay, here are the responses. This is what we can and can't live with." And then it would be a matter of saying, "These are the changes we've made as a response." Or it might ask people to come up with responses. It did not really go to that next sort of engagement stage where people actually were involved in the vision building. As Hamish said, there was fairly good agreement around a number of things that could be set aside as just being a matter of: "Okay, everybody agrees on that. Let's put that aside and leave it and move on to other things." There are a number of things that still stand out that we do not feel the community, developers, financiers and people who were involved in the development process were actually engaged in.

Mr Sinclair: It has to be said that the issue of density and infill was glaringly obvious. With respect to everybody in the time to talk process, right the way through to, as I said, the reference group itself, there was absolute consensus on the point that this is a good consideration. We need to respond with infill and density to achieve a whole host of outcomes that are beneficial for the city. Unfortunately, the next step never got taken, which was how to then translate from this principle that is widely accepted to delivering it.

We quickly recognised that a key construct around that was around desired character. That never really got worked through. It would have been perhaps a much better use of time to have spent a large part of the engagement process defining what the character is for each suburb than actually running a time to talk program on whether

we all agree with infill, because the answer was very quickly achieved that, yes, we do, if we know what the outcomes will be.

MS LE COUTEUR: Can I talk some more about the solar access? I must admit that I am probably missing something. I am not sure if I am totally understanding this. Are you saying that (a), (b) and (c) are all elements which are in the draft territory plan variation now? I clearly recognise (a); that is clearly proposed in this.

Mr Sinclair: Yes.

MS LE COUTEUR: To some extent (b) is. Are you saying that (b) should be in here? I am really confused.

Mr Sinclair: Firstly, in constructing a performance measure we looked at what the planning authority said the criteria would achieve. That gave us, "There are your performance measures." Essentially that is what they said; it is in their fact sheet on solar stuff.

MS LE COUTEUR: So (a), (b) and (c) is what you say they said? I am just getting confused.

Mr Sinclair: Yes. But we have also looked back at the rules and there are some baselines about what the stuff should achieve. One is the issue of a solar fence, the 1.8-metre high, and the other one is three hours of sunlight. Those are the cornerstones. They are not new. They have been around since the ark in terms of planning principles and design—the old plan, and they have come through to the new. So they are not radically different; they are just actually stated here instead of being assumed.

Bearing in mind the actual requirement that we have is for reasonable solar access, this is the replacement for that. It is wordier but it gives you three cornerstones of consideration plus some flexibility in terms of how you deal with new blocks, big blocks, new developments, compact blocks, mid-sized blocks. So there is a granularity but there is also the big picture stuff—three hours of sunlight and a fence.

MS LE COUTEUR: The first part is easily comprehensible by me; we have been through this a few times. On the second one you were saying that if I am building a building it is every part of that, except if it is on my southern side, which I think is what you mean by the northern boundary—correct me if I am wrong. If part of my building faces due south then I do not have to do this. But, apart from that, does every part of the building have to have three hours of sun on it? I am just trying to translate this into—

Mr Sinclair: That may be—

MS LE COUTEUR: I am just trying to understand it. You put it as objective tests; what does it mean?

Mr Sinclair: In terms of that, the first principle is that you have your three hours. And you are right: it could be interpreted that it could be three hours on each side. But it is

really a case for the developer to argue that they may only be able to achieve it on one side because—

MS LE COUTEUR: But you have got "for additional building bulk adjacent to boundaries".

Mr Sinclair: Yes, so the assumption there is that it is for three, which would be problematic.

MS LE COUTEUR: That is certainly how I read that.

Mr Sinclair: But that is what the planning authority is telling us the criteria will achieve. This is not a finished product. This is simply showing you that the justifications for the reasonable solar access are these, or that these are the actual performance measures. We have some issues around them as well in terms of clarity, and that is the very first one, as you say. Does it mean three hours from just one side? I would suspect most architects and others would suggest that getting three hours on each side would be quite a design issue.

Also, if you start specifying a boundary, maybe that is a solution; maybe you drop from "boundary" to "boundaries". But that is the kind of conversation we would like to have with the planning authority about agreeing the wording of this to achieve what they have set out as the requirement, what the objective will achieve. Okay, we have given you some wording. We think it could be tweaked. If we could go outside this environment, do that tweaking and come back to you with, "We've talked about it, they've talked about it, we're in complete agreement that this will actually achieve what they want," then you are sitting there looking at a finished product.

What we have given you is our first cut of something that has been in play now for two years, and we had two weeks. We have said, "What are the first principles here? What's going to be achieved?" We have done that by looking at what the planning authority have said this rule will achieve.

Mr Straw: What we are trying to say is that this is the approach we would like to take. This is the type of form of sentence, rather than looking at the detail as to whether or not it works. We are saying this is a better form of sentence, a better form of setting out what the numbers are and whether you make it three sides, one side, a northern courtyard or something like that. That is up to the planning authority to say. But saying "a reasonable amount of sunlight" does not achieve anything. What is "reasonable"? To the developer next door, it might be reasonable that they give you three hours of sunlight in that little corner over there. To you, as the existing owner, you want the whole of your backyard to have three hours of sunlight.

Mr Sinclair: You probably would want three hours on every side.

Mr Straw: On every side. We are saying that there needs to be a different approach. It needs to say, "This is what would be an acceptable outcome if a new development goes in."

Mr Sinclair: Or at least this is what you should be designing towards, to try and

achieve these elements. You may discount some because, after all, it is a performance measure and there is an opportunity to say, "We suggest that it will achieve this." The planning authority is at liberty to come back and say, "You know what: it doesn't," and refuse the application.

MS LE COUTEUR: I assume that you have seen the MBA's evidence to us—or maybe not.

Mr Straw: No.

Mr Sinclair: No.

MS LE COUTEUR: That is a pity, because I will not be able to explain it well enough. They spent a lot of time talking about solar access, with lots of wonderful diagrams, but basically two points were made. The first point was that the 1.8-metre boundary will in some cases reduce the bulk of the building compared to what it would have been otherwise. While it may be regrettable to some people, it is probably an unexceptional result insofar as there is no free lunch: you are going to have more solar access; there is going to be less building somewhere. So that is not what I am asking about.

The other one was more worrying and I do not understand it well enough to know if it is correct. They were saying that the way the 1.8 regulation had been produced it was going to lead to buildings being wrongly sited on blocks because they were going to be pushed all up to the northern boundary so that it would end up that everyone's backyard never saw the sun. I am interested in your commentary on that part of the MBA's problems, issues. They explained it better—they had lots of wonderful diagrams—but hopefully you get my drift.

Mr Sinclair: Without the diagrams and reading the submission—okay.

Mr Straw: I can only say from discussions I have had that they have got some reasonable concerns. What we are concerned about is the response to go to a very vague set of controls instead of a step-down minimum sort of policy that can be set as a standard that can then be varied, which is what we are looking for and what the DAF policy looks for. The DAF methodology provides for innovative responses. If you look for reasonable sunlight and then say that the reasonable amount of sunlight is the amount that a 1.8-metre fence would provide, you will get some really weird longer term outcomes.

Mr Sinclair: But you may also argue that in exercising discretion they may decide that a 1.8-metre fence is not the absolute line. They may be able to reduce it based on design, innovation or whatever is being proposed. If a developer was to come to the authority and suggest that all of its development was going to be pushed to the north and everyone is going to get no sun for the outdoor area, unless this is adjusted to reflect a change in that, accepting a lesser standard than 1.8 metres, to get a benefit of that solar access for three hours, there are your innovation flexibility levers that you can potentially consider. But if you just have "reasonable", that gives no guidance.

This is just a set of guides that a designer would design to. It may be that in designing

it as a response they discount one against the other to achieve an overall outcome that is a better development. Equally it would empower the Planning Authority to say, "If you are not going to get the three hours of sunlight and you are not going to get the 1.8-metre fence, we can say no." But it might also enable them to say, "It is a performance test or an objective test and we can see good reason as to why you would not want a 1.8-metre fence height issue here; that the three hours might be only on one side of the building." They can respond in those terms because that is the rationale they are testing.

MS LE COUTEUR: Okay. I am getting more confused. These things here are all objectives and you are suggesting that that is probably not the way to go; that there should be some performance—

Mr Straw: We are saying that there should be—

MS LE COUTEUR: but it would not involve the word "reasonable".

Mr Straw: Yes, that is right. We are saying there should be performance criteria against which a reasonable approach could be measured.

MS LE COUTEUR: Take solar, for instance. What would the performance criteria be?

Mr Straw: There is a whole range of them. Gosford City Council, for instance, are saying that in a medium density development every unit or flat or whatever should have access to 40 square metres of outdoor space that has at least three hours of sunlight between certain areas. That is one approach that you could do—where the 40 metres is, how it works and then they have got a whole pile of criteria as to how much sunlight should be able to come through living room windows and front-facing sort of areas and that kind of stuff. They set that out as clear criteria and then they say there are deemed to comply criteria, so you may not be able to achieve that but you may be able to show that you have been able to comply in some other way. That is where the—

MS LE COUTEUR: And you think something like 40 square metres would be better than the solar fence approach?

Mr Straw: No. What I am saying is that—

Mr Sinclair: I would want to test it. I guess that is our issue. We have not seen the diagrams. We need diagrams to sort of—

THE CHAIR: I think what they are saying is that that conversation needs to be had.

Mr Straw: That conversation needs to be had, but what we are saying is—

MS LE COUTEUR: But surely that conversation has happened to quite an extent, at the very least within ACTPLA and within the reference group. There are obviously different ways that you could address this and—

Mr Sinclair: I do not believe it was canvassed in the reference group, but it would almost certainly have been done by the Planning Authority internally. We have not been privy to that and again architects and others would be able to calculate how these rules will then be actually applied. But fundamentally the question for us is that you have current drafting that does not provide any of this. What we are giving you is an example, and it is only a draft example, I might add, of how elements or tests might be included in your criteria that shape the thinking of architects in designing. It is not a comprehensive—

THE CHAIR: I think we need to go on to Mr Coe's questions. If you are interested, you could look at *Hansard* pages 65 and 66 where Mr Howard, Mr Dowse and Mr MacCallum appeared before us. There are particular references to what Ms Le Couteur is discussing.

MR COE: What I have interpreted from what you have said so far is that there does appear to be a lack of certainty for all concerned, be it planners, residents, the government, the community or whoever, and without that certainty it is very hard to know what the rules are and how you can work within that to innovate or whatever. Most of the queries that I had have been addressed in what you have already presented today, so really the only thing I would appreciate some more commentary on would be with regard to density in RZ1 and RZ2, which you have made mention of on page 8. The second paragraph of 1.1 says:

> We are concerned that proposed density controls have been reduced and are now equivalent to an RZ1 zone contrary to the original planning intentions for these areas.

Would you be able to give additional background about that?

Mr Sinclair: Broadly the RZ2 essentially was a boundary that we were looking at for the suburban core under variation 200 and that was to allow for infill development, a multi-unit development. It is now restricted to essentially dual occupancy type arrangements. Whilst it was a transitional area around local centres and was encouraged to promote multi-unit development, that whole opportunity has been forgone by limiting the number of units you can actually develop through block amalgamation. That is not to say that there were not any problems with it. Certainly in cul-de-sacs it is well acknowledged that when you are able to get some of the non-standard sized blocks and amalgamate them to a larger block you could certainly have 10, 12, 15 units appearing in a cul-de-sac and that is not necessarily an optimum outcome. But that was more a deficiency in the original rules around what you could do in development in that R2 zone.

There are, I suspect, many instances where block amalgamation and developments above four units would be desirable outcomes where they are in close proximity to commercial centres. But again that is only one element. You also have to put against that the character consideration and that is where we come back to this problem. So variation 200 did not really develop the desired character that was there. It was in the old plan but it was not very well enunciated. There were a range of other planning documents around, planning guides—I am trying to remember what they are called now; the name escapes me—essentially community plans for various—

MS LE COUTEUR: Neighbourhood plans.

Mr Sinclair: Neighbourhood plans; thank you. Those neighbourhood plans attempted to refine the character discussion and that I think is why so many community groups have been so concerned that those plans have been lost, because a lot of effort was put into them. They were not comprehensive, they were not consistent and they were not across all the suburbs that needed to be covered—all good reasons why you either get rid of them or you go on with them.

In this current framework it is regrettable that they were not gone on with, but it reinforces the issue that character has always been a problem when you looked at density and infill. Variation 200 had that issue and the neighbourhood plans were, I believe, a response to that. I may well be corrected after today, but my understanding is that they were a response to community concern about character as a response to infill development.

We have got rid of those plans and the work that went into them. We have also got rid of character and we have also got rid of the infill component allowing for multi-unit development. So ultimately the settings and levers might have been pulled to reduce the scale of development, but it still does not address the fundamental problem, which was the type of development and its impact on streetscape.

THE CHAIR: I have a comment about the dilemma that I think we have; it has come out of time to talk and you have pointed to it. It is that there is this broad agreement across the community that infill, suburban renewal or whatever you like to call it is desirable. But you have said that it is in the application of it where it comes unstuck. In all my experiences of any community conversations around these kinds of things, it seems to me that even when you see what appears to be a fairly innocuous or sympathetic kind of suggestion of what might be there, it is, "No, I don't want that there because it's close to me." It is what they call BANANA: build anything nowhere anywhere near anywhere I live.

Mr Straw: Yes, nowhere near me—absolutely nothing anywhere near me.

THE CHAIR: Sorry?

Mr Straw: It does not matter.

THE CHAIR: Yes, something like that; I have forgotten what it means but anyway that sort of theory. I am not suggesting that these people are being vexatious or anything. I think there is genuine concern for climate change, health outcomes and all those things in the community, and practically everyone agrees with that. Then we go to the application and you get completely unstuck at that point. I do not know what the solution is. Are you saying that this approach is making it more difficult to come to a resolution of those things?

Mr Sinclair: Yes, absolutely.

Mr Straw: We are.

THE CHAIR: Then, if you think it is making it more difficult, we really need some guidance as to how to make it easier. Or is it impossible? I do not know.

Mr Straw: It is not impossible. People living within a neighbourhood are quite happy to see change if they think that that change is going to add value to their properties and add character and add living style. What they are often faced with is that in their view increased density brings a reduction in their amenity and a reduction in their ability to deal with the amount of traffic, loss of streetscape and access to services, instead of bringing additional value.

I actually am very fortunate; I live in a community that has a lot of townhouses in it, we have just had a rather large development near us and 80 per cent of the neighbourhood have basically said: "This increase in density is fantastic. We love it. There are a few things we would like tweaked about it, but we love it." What the developer there was able to do was come in and say, "How can we address your streetscape issues?" The developer actually took the initiative, came in and said: "Let's address the streetscape. Let's address a whole range of things." The neighbourhood told them of the issues and they came back with a response before they came to ACTPLA. So it can be done. But people are very concerned that they are going to lose property value—that is the first issue, although they will dress that up in other areas—that they are going to have increased traffic, especially during the construction phases, and then that they are not going to have a streetscape that is left with some character that it has got now.

Those things can be addressed most of the time, or a large part of the time, through a very good understanding of what the local amenity is now, what needs to be preserved and what the values are that people have that need to be looked after. With a bland set of rules across the territory, across the city, people can go out and see how those rules have been applied in perhaps a poorer suburb than theirs, look at those results and say, "If that's what's going to happen here, I don't want it." Most people will say: "I understand that we need to increase density. I would like to increase density on my own block, but I don't want to be living with that." And that is where you need individual solutions; you need different solutions for different suburbs.

THE CHAIR: Would it be desirable to have, in addition to this, a set of rules around processes rather than just rules and criteria? In other words, before you are going to do X, you need to go through these particular processes in order to make sure that you have an outcome at the end that people are happy with?

Mr Sinclair: I think there are two elements there. One is that the current process where you only have rules and criteria, you have no intent or no purpose for those rules, is a failing, and that needs to be addressed. There needs to be a linkage between intent, rules and criteria so that you are actually designing in response to something other than just the rule itself. So that is the first thing that needs to really change.

The second thing about process—and there are probably a range of ways of doing it—is that mandating a process does not ensure an outcome where you are really wanting engagement. So I am not convinced that putting another rule on the form that you must go and talk to the community group and get their agreement will achieve

anything, particularly if they can then see that as a way of saying, "We are not agreeing; so you cannot apply."

Mr Straw: I think if you give too much power to the community you will scare developers off. If developers feel that the community has to give a yes tick to everything that they do before they can come in to ACTPLA, developers will simply go, "That is just too hard." But if you open the way for a developer to have that as an option and to be able to go to the planning authority and say, "We have been able to resolve a number of these issues," and if it is an option whereby ACTPLA can then deal with some of the details in the planning thing by saying, "Actually, that is what your plans are but the community has said this and we are able to respond this way and have deemed-to-comply provisions that allow for that kind of thing, yes, you can do that," that can add value to things. But it has got to be a value-add, not a subtractive system.

Mr Sinclair: It is a very difficult question we are trying to resolve and it is not unique to us. It is in every jurisdiction. So clearly we do not have the answers. If I did in full, I would be able to retire now. But I think the processes around engaging the community and refining the issues of character will go a long way to removing a lot of the stress in the system, and making that linkage between the rules and the purpose of those rules, be it intent or the objectives that clarify what the actual outcomes are, in a more useful manner than "good solar access" or "reasonable privacy" will go a long way to addressing the implementation issue.

But certainly, again, I am very confident the community will always put up an argument "not in my backyard", because they always point to down the street or around the corner or in a neighbourhood where there is a classic, ugly building example they can rely on—same zoning, same rules, "not my backyard, thanks". And that is really where we need to act and this is what we are saying. This is actually making it worse, not better.

There are elements of it that are going towards the solution but it is, as a whole, not getting there. But also the system itself, the linkage between purpose and these rules, is not there. By the planning authority's own admission, there is not any of that actively removing the purpose. We struggle with that.

MS LE COUTEUR: I would like to ask about permeable space. That is something which a number of people have talked about. When I talked to ACTPLA they pointed out there are these requirements for 25 per cent, in general. Do you think that is a reasonable requirement and do you think that it is in any way an achievable, enforceable requirement? Generally the conversations start off with, "Yes, it is a good idea, we should have it," but landscaping gets done whenever and the fact is that many new blocks are basically covered by an entirely impermeable level of concrete.

Mr Straw: What makes me think the landscape architects have been here before us?

MS LE COUTEUR: No, they are here this afternoon.

Mr Sinclair: They come this afternoon? Here is our chance to get in early.

MS LE COUTEUR: It is not just the landscape architects who make these comments. I have not read the landscape architects' submission.

Mr Sinclair: I guess, on first principles, of an entire site, 100 per cent of it, if you have got 25 per cent of it permeable, that is a good outcome because then 75 per cent of the block is going to be covered in concrete—in effect, an impermeable area. Whether that is a reasonable ratio, if you are in a low-density area and you are looking for an outdoor space, depends on whether you want it all grassed or you want a paved area. Does that influence you? I would have thought that the ratio of site cover, as a measure of impermeable surface area, by default gives you a permeable. Twenty-five per cent is less than the plot ratio, if you like, of site cover. Therefore there is obviously some provision that the planning authority or the architects have considered might be used for a courtyard or clothes lines or whatever. There might be an outdoor area.

MS LE COUTEUR: Car parking.

Mr Sinclair: Or car parking.

Mr Straw: It is achievable in a completely different way if you are doing a greenfield development to what it is if you are subdividing an individual block and putting a dual occupancy on it or turning an individual house into three or four units or five or six units or something like that. When you get down to that scale, you have got to ask yourself, "What is the purpose of it?" When we talk about permeable space, we are talking about rainfall and water and all that sort of stuff.

Let me put it in a different way. A lot of those rules were worked out when we thought that it was not a good idea to use water tanks. We now have a completely different idea of how we manage, hold, store and reuse water on the ground. For instance, Ku-ring-gai have a very strict set of rules around that kind of stuff—they were created before water tanks—because they have a very steep topography, they have very rapid run-off and they have huge stormwater problems that they need to deal with. You have really got to go through the engineering and say: "Is that a big issue here? Is it being dealt with in other ways?" And my view of it would be that you have got to allow people to be innovative.

So if you set that up as criteria and say, "This is the objective," to be able to have so much permeable space, to be able to allow X amount of water to disappear into the ground before it hits the stormwater system, you should then also have a criterion that says, "But if you cannot achieve that, you need to show how you are going to capture and manage that much water." And that would be a deemed-to-comply. Somebody might say, "We are going to buy underground tanks or something and we are going to store the water and we are going to reuse that in the household or for gardening or for something of that nature." Then the planning authority might say, "Yes, they are deemed to comply with that." What is your purpose?

MS LE COUTEUR: The other part of my question is: can you think of any way it can actually be enforced? What I understand tends to happen is that all these spaces are compliant when they are put in, but a year later someone does their landscaping. On some of the blocks I have seen, there is no permeable space.

Mr Sinclair: Yes. I do not think you can, unless you can have backyard inspectors, although aerial photography will do that.

MS LE COUTEUR: With Google Earth and NearMap, it is achievable. With current technology, it is possible to inspect this.

THE CHAIR: You have answered your own question.

Mr Sinclair: Yes. I guess we come back to: what is the purpose? Why are we doing this? It is probably because right about now, after 30-odd millimetres of rain, my backyard is a bit of a bog and I am quite happy to have a paved area to get me from my back door to the garage or whatever. I am just going to pop down to, I do not know, Bunnings or somewhere and grab a set of pavers and hey presto there is 20 per cent of my backyard that is now under concrete. That is going to happen. That is, unfortunately, people. They are a hard bunch to manage.

I think the only reasonable measure is when a development is before the planning authority. Once it has left their control and they have approved the development, it is really hard to come back. You can put measures in and say, "If you buy more than 10 pavers of a certain dimension you have to get a planning approval," but I think that has kind of lost the plot.

THE CHAIR: I think that would have been a more interesting concept than having everybody lining up at Bunnings and saying how many pavers have you got.

Mr Sinclair: Yes, and then they would shop around to all the other shops.

MS LE COUTEUR: I am not going there.

Mr Sinclair: My response to that then would be that if it is not required, why have we got it? If you cannot reasonably measure the 20 per cent and you already know that the plot ratio site cover provisions for the building area allow for 30 per cent, why create the rule in the first place? One of the problems we have with the plan is this overuse of creation of rules and a failure to step back and strip away all of the rules and set out what is the purpose here. What are we trying to do? And do we need to write that rule in every section or can we put it right up the front, say it once and it is covered and it achieves all these multiple objectives and purposes? And I think we have referred to that, and one of the examples is a single dwelling.

I think there is a real problem with this plan. It is a huge document when you look at the codes. They are no longer simple, fast, transparent to mums and dads, developer friendly. They are barely professional friendly in terms of their complexity and detail. There is a strong need to revisit the content of these codes and strip away a lot of the superfluous, fine-grain detail because it is actually getting picked up in other areas of the plan and it is getting picked up more effectively. And if you can have as one of your benchmarks whether the rules should be there or not, you might surprise yourself and find that you do not need the rule. It is actually covered somewhere else.

THE CHAIR: I do not want to labour the point, but I am a little confused about the

two approaches that you seem to be taking. Maybe they are the same approach. In one, in the solar, for instance, you say that we need to say clearly what it is and really delineate it. "Step by step," you are saying, "not just have this one little thing that says it should be reasonable or whatever." On the other hand, you are saying that a lot of these things are embedded elsewhere anyway; so it is assumed that they know that. It is said up-front that it has to be like this; therefore all the other areas should abide by that. And you are saying it should be simpler for the mum and dad who come and have a look and who want, maybe, to examine what the rules are for themselves if they want to do a development or say why they do not agree with something that is a development application up the road.

They may not know, they may not be able to understand, that when they read it here, it means everywhere else. They just read it there. It is like the small print when they buy an airline ticket. They did not realise that that applied to everything. They just thought it applied to this. How do those approaches marry? I do not see that they do. Maybe I am just hearing you wrong?

Mr Straw: I think if you look at the way a number of other documents are made up under the DAF principles, what you have is your objectives up-front in your document and you just have them once, then you have, for each zone or each particular requirement, your detailed rules and then you have a reference in there that simply says, "For residential, flat buildings, whatever zone you are in, see the car parking rules." Where things are the same and are repeated, just to reduce the size of the document, you simply have a reference to where those rules are. And that significantly reduces the size of the document.

Basically your rules are around one of two things. They are either geographically based, so they are within the zone, or they are subject based—car parking, stormwater, whatever. Where you have got stormwater management guidelines that you want to achieve across the city, you can have stormwater management guidelines the same as you can have car parking guidelines that are pretty much the same and you just divide them up by the type of development. It does actually make the plan much simpler to read. So people go to the front section and say: "There are all the objectives. We want to improve the amenity across the city. There are the rules for this particular zone and then my car parking, whatever, rules or details are somewhere else. When I get to that part of the design, I know where to go looking for it."

Mr Sinclair: I think that some of the codes, particularly the more recent ones, tend to be very fine grain, to the letter. As you can probably recognise, a code is split into two parts, general provisions and then the area-specific type, fine-grain stuff that follows. Most of the rules are set in that secondary category and are very fine grain. But there is not a good whole-of-system look at the rules. They repeat themselves time and again across all the elements and you really have to ask yourself why. As I said, that one criterion that we picked on is repeated exactly the same 26 or more times, I think. It is in the submission. Why do you need to repeat it 26 times? It seems to me an overproduction. It is a safety net upon a safety net upon a safety net. From a compliance perspective, that is great. You will capture everything but from a creativity, an innovation and a design outside the box solution to the problem, you have killed it. It is not going to happen because it is just too hard to sit there and work through that.

I would suggest that if you look at the DAs that are notified on the web by ACTPLA, they invariably have a statement against criteria. And some of the statements of criteria are amusing because they barely cover half a page. They may be yes, no, yes, no. And when you look at the code of some 60 pages, you wonder whether they have read it all. I suspect they have not or they simply, like most of us, struggle to understand what is actually being sought. And in the situation of confusion, the default is "I do not know; I am fine with that one; I will move on to the one I do understand". Again, it is one of the issues with the construction of these codes, and the way they are being constructed currently is distinct from how they were a couple of years back. Yes, it is a whole drafting issue.

THE CHAIR: If members have not got any more questions, we will adjourn this part of the hearing. We thank you very much, Mr Straw and Mr Sinclair, for coming today. You will get a copy of the *Hansard* and you can have a look at that just in case there is something that has not been picked up accurately in the *Hansard*. If members do have other questions, we will certainly get them to you as soon as possible so that you can get the answer back to us as soon as possible. We will be hearing from the Property Council at 1.30. Thank you very much.

Meeting adjourned from 12.23 to 1.34 pm.

WINNEL, MR ROBERT, Member, ACT Division Council, Property Council of Australia
KENWORTHY, MR JOHN, Member, ACT Residential Committee, Property Council of Australia
PRATT, MS ALISON, Member, ACT Planning Committee, Property Council of Australia

THE CHAIR: Good afternoon, and welcome back to this fourth public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services into draft variation No 306 to the territory plan, residential development, estate development and leasing codes.

Welcome to the Property Council of Australia—Mr Winnel, Mr Kenworthy and Ms Alison Pratt—and thank you for your time this afternoon. I draw your attention to the privileges statement, the blue card on the table, and ask that you indicate whether you understand the implications in the statement please.

Mr Winnel: Yes.

Mr Kenworthy: Yes.

Ms Pratt: That is fine.

THE CHAIR: Thank you very much. We have your submission, Mr Winnel. Do you want to make any opening remarks?

Mr Winnel: Only that the issues that we bring forward this afternoon are basically issues that are affected by housing affordability. I think the issues have got a fair bit of sympathy in ACTPLA. We have had preliminary discussions with them before coming here, but we will go through them in detail one by one.

THE CHAIR:. Do you want the members to ask you questions in detail one by one or do you want to go to them yourself?

Mr Winnel: There are four issues we wanted to raise. Could John raise them and then you interrupt whenever you have got a question?

THE CHAIR: Yes, that sounds like a good plan. Mr Kenworthy.

Mr Kenworthy: One of the main issues we wanted to raise in a technical sense is the issue of water tanks on small lot housing and housing in general. The intent of water tanks, as we understand it, is to reduce the amount of potable water used in the ACT, and, in particular, the water that comes through the mains at cost. We think the whole premise of it is probably incorrect. The way water tanks operate is: you have a tank on the house that harvests roof water. It then has a pump which is automatic within the tank itself so that when a tank is full the water services the laundry, the toilet and maybe external water use. When the tank runs dry the pump comes on. From the point of view of the householder they do not really know where the water is coming from—whether it is from the tank or the mains—because there is no way to actually see it. So it does not discourage the use of water at all.

Mr Winnel: John just left out one little thing: when the tank empties, it then switches over to mains supply.

Mr Kenworthy: Yes, it switches over to mains supply. So people do not know where the water comes from and so it does not encourage reduction in water use. It just means there is less water coming out of the mains rather than in total. Of course, there is a cost involved in that. The ICRC's report, which was completed recently, actually compared the costs of different sources of water to a household. For instance, for primary water supply from the mains they came up with a figure of $2.33 a kilolitre. With a rainwater tank on a house that is plumbed into the house, which is required under our building rules, it costs $10.92 a kilolitre—nearly four times as much.

That extra cost is put on new households and has a real impact on the lower end or the affordable end of the housing market. It seems to me to be an unfair impost on people of limited means who are struggling to get into the housing market compared with people who already own a home or are buying a home that was built 10 years ago, 20 years ago or whatever.

THE CHAIR: Mr Kenworthy, can you give us the date of that report, please?

Mr Kenworthy: I have the draft copy of it in front of me, and it is dated May 2012.

Mr Winnel: Could we leave a copy for the committee?

THE CHAIR: We should be able to access that. I just wanted the date so that we can access the right document.

Mr Kenworthy: To give you an idea of the capital cost of a tank, we put a submission to the ICRC, and I did quite a detailed analysis on an average cost per dwelling for the Village Building company over a three-year period. It was $1,637, which just goes straight onto the cost of the house to the end purchaser.

Mr Winnel: We are talking about the houses that we produce, the vast majority of which would be under the $373,000 threshold that has been established, so that is $1,600 in the 370-odd. Of course, if you look at the build cost alone, the build cost is about half the total cost, so it is a significant impact.

MS LE COUTEUR: Could you see a use for having provision for a tank but the tank not actually being supplied at the time of construction, so that if people wanted to install one in the future the plumbing would be set up right and they would not be in the situation where they had to reorganise their guttering—a sort of halfway house?

Mr Kenworthy: Yes, that could be done, because when you are building new housing the cost of the extra plumbing is miniscule.

MS LE COUTEUR: Exactly.

Mr Kenworthy: If there was space allocated, it would be fine. Similarly, the downpipes on the house have to exit through drainage points anyway and where they

are located does not change the cost of the house at all. The costs I have quoted are the costs of the tank, a water switch, a pump and a concrete hard stand on which to mount the tank.

Mr Winnel: We might have a look at the costs of that and send you a brief note. We will have a look ourselves from our own information. We are assuming it is pretty small, but we will just have a detailed look and we will send you a detailed note.

MS LE COUTEUR: I was just thinking that could be the halfway point between the two?

Mr Winnel: Yes.

THE CHAIR: So that is taken on notice and that will come later.

Mr Winnel: Yes, we will send that out.

Mr Kenworthy: The next major cost item that impacts on housing is a requirement by ActewAGL to provide access easements to the rear of blocks where there is a sewer or stormwater mains. We are going through a trend that has been extending over the last six to 10 years of smaller blocks with less frontage to make the house and land packages more affordable. In a house and land package, particularly with the smaller lots, the land is close to half the cost of the total package. So if you can reduce the costs of the key item, which is the land, then you can keep some sort of cap on the price of the house and land package.

We currently have a requirement where we have two choices: we can create a 2.2-metre access way down the side of a house or we can double up on the length of the sewer and stormwater pipe in a job by actually having it run on each side of the street rather than the back of the block. Once again, if you look at basic housing that meets the government's current $373,000 threshold limit, that is essentially a three-bedroom house with a single garage. The minimum width you can actually build a liveable house that has rooms that are, say, three metres in width is 7.7 metres. If you have to add 2.2 metres to that to provide the access, then you need a 9.9 metre block. Of course, a cost is involved in that.

Once again, we did a fair bit of analysis on that. Instead of using, say, an 8.6-metre block, if you had to go to 10 metres, it would increase the average cost of the land over Village Building company's estates by $23,000 per dwelling. When you are trying to create affordable housing, that is a huge impost.

The alternative is to run dual services. Once again, we carried out a detailed analysis on a current project involving current construction rates at Ngunnawal 2C stage 1, and dual services add $5,800 to each lot cost. When an analysis is done and you are buying the raw land at auction, you take account of all your costs. So government is losing that income because the raw land is worth that much less because the construction costs are high.

For many years, or at least three years, industry organisations such as the Property Council and the MBA have asked ActewAGL to provide a cost benefit analysis on

whether they really need access to the rear of blocks or how often and what does it cost. To date we have received no response whatsoever, and it is something that really needs to be tackled. For instance, they should look at the frequency of repairs and what they require. If you are in older suburbs where you have got vitreous clay pipes with rubber ring joints, you have a problem with root intrusions, and there may well be a cost there. But since 1984, I think, we have used UPVC sewer pipes which are six-metre long pipes with a glue joint, and the root intrusion is virtually nil. They coincide with the smaller lots.

So it may well be that this is just simply a nonsense requirement. Government should really be doing a proper cost-benefit analysis and investigation into the frequency of the need for access. Maybe one solution is that access to the rear of blocks be provided where there is a manhole within the block rather than every block of land where there is a sewer pipe running through it.

Mr Winnel: This is a point we have actually raised with Actew, but we have not had a positive response. This is where we think that government policy ought not to be blind. This sort of requirement is not going to impact the higher end of the market because most people are going to have blocks that are wide enough so that they do not have to worry too much. But when you get down to people who are battling to get into home ownership and the land price has to be minimised and the house is only 105 square metres or whatever, with a single garage, every dollar becomes really important. So if you have amounts of up to $20,000-odd and government—I say "government" but I mean Actew—introduces a new regulation, surely to heavens someone should look at the costs of the regulation.

If you do not have the access and Actew have to occasionally go into a backyard and use a ditch witch because the block is narrow or they have to use equipment that they can manhandle into the backyard, if this occurs rarely and Actew are digging a hole manually once a year, should you spend several million dollars imposing a requirement on new homebuyers to save digging one hole a year? We have no idea if it is one hole or 100 holes or no holes a year that have to be dug to gain access to a backyard where you cannot drive your backhoe into the backyard.

It is not as if there is some drop-dead policy set up where we have got a catastrophe and we cannot fix it. It just means that if there is an inexplicable blockage and it has to be dug up, you cannot take a backhoe into the backyard. Depending on the frequency of such a problem, the question is: so what? Someone has to use pneumatic equipment or a Kango hammer or something to dig a hole in a backyard because they cannot get big equipment in. You should look at the cost of doing that versus the benefits to a whole range of first homebuyers, and maybe 20 per cent of the market might be affected for new homes. If you start to do the sums, there is a way of evaluating whether it is justifiable or not.

We are certain it will turn out to be not justifiable, but we cannot assert the facts because the only people who have got the facts on how often they have to do it are Actew, and the facts are not available. We do not quite understand this. This is a regulatory body looking at something and saying: "If there is any inconvenience to us, we're not going to wear it. We're not going to wear any inconvenience. We're going to have access for a backhoe every time." That is fine, but government is focused on

affordable housing, so is that kind of attitude justifiable if the cost to first homebuyers outweighs any inconvenience many, many, many times?

We think it is a pretty irrefutable argument that regulation must be assessed for its costs and its benefits. The costs are imposed on first homebuyers with limited means and the benefits are less expenditure by the authority. If that expenditure by the authority outweighs all the savings, then, yes, there is a pretty watertight argument to do it, but if it is vastly outweighed by the costs to first homebuyers, then it should be reviewed. The industry has been in dialogue about this for a long time. How long has this regulation been in, John?

Mr Kenworthy: It has been in practice for about three years.

Mr Winnel: So we have been raising this issue for three years, and we are still raising it. We think it is wrong that we are still raising this issue. There should either be facts presented that put our argument out of the tent or facts presented to prove the argument is valid. Either way, there should be some facts. This is not an argument of industry versus regulation; it is just costs and benefits. It is really easy to precisely determine.

MS LE COUTEUR: Where you see new developments that have what I would call row housing, terrace housing, they are all joined up together, are they having two lots of sewerage in those? Clearly there is no access to the back.

Mr Kenworthy: Yes. Instead of having back of block sewers that can serve two blocks that are back to back, it runs down each side of the street. It is similar to the stormwater. It means that you are doubling up on the service. Apart from the extra cost, there are extra lines that have to be maintained.

MR COE: That is right. Presumably it is double the risk to have two lines of services.

Mr Kenworthy: That is right, and it causes all sorts of implications for design in subdivisions. Unfortunately we do not live on a flat earth; it is hilly. Where you have an adverse slope, you end up with deeper than desired services, so that you can actually drain from the house into the sewer main.

MS LE COUTEUR: I think it is something we will be taking up with our next people, the Institute of Landscape Architects, because they certainly have concerns about the limited space in front of houses to plant street trees. I guess that is one of the other things that are making street trees' lives harder—having more pipes underneath them.

Mr Kenworthy: Yes, that is correct.

Mr Winnel: John, if we looked at the situation of terraces, are there any instances where we would argue that the services should still be back of block?

Mr Kenworthy: Yes, where we have an adverse slope and the slope of the land is towards the back of the block.

Mr Winnel: Presumably it would be easier where it is on open space. You would

have alternative access into the yard as well.

Mr Kenworthy: Yes, that is right. Unfortunately fluids all run downhill, not uphill.

MS LE COUTEUR: We will pass a law about that!

Mr Kenworthy: You try to put the sewer and stormwater in the lower side.

THE CHAIR: We got up to point 2.

Mr Kenworthy: I will move to the next item, which is private open space and its impact on housing. At present in new estates, compact blocks, which are those blocks that are 250 square metres and less, have a minimum private open space dimension of three metres. So it can be three by three. These blocks are typically, particularly the ones produced by the LDA, 25 metres deep by 10 metres wide—I think they are 10 metres wide—so they have got the access down the side for the sewer and stormwater.

On a 25-metre block, if you increase that minimum dimension to six metres, as required under DV 306 for a three-bedroom dwelling, you simply no longer have the depth in the block to build a three-bedroom dwelling. For a typical house, to meet the current threshold of $373,000, it needs to be 105 square metres. If you divide 105 by 7.7 as a more or less standard width, you will end up with about a 17-metre long house, including the garage, which is additional to the 105 square metres. You simply cannot create a six-metre minimum dimension of private open space.

The current standard of three metres is fine; it works, just. You have a couple of hundred millimetres spare. Really, what is happening is that DV 306 will preclude the construction of a three-bedroom, single-storey dwelling on a compact block. Compact blocks were created to assist with affordability, and this is directly contrary to that.

Similarly, within 306 there are other conflicting statements. If you build apartments in an RZ1, RZ2 area, where you might build two or three dwellings and you have a two or three-bedroom dwelling, you have 36 square metres required, whereas if you go to an RZ1, RZ2 in a new area, the two-bedroom can be 28 square metres with a minimum dimension of four. So I fail to understand why you need the larger area on one dwelling because it is built there, whereas in the next suburb away, which is new, it is a different size. There is a lack of consistency in that.

MS LE COUTEUR: Have you talked to ACTPLA about what you think is going to happen, with the larger private open space, to three beddies on compact blocks?

Mr Kenworthy: Not in detail. Some of this has really only come out—it is a very complex document and it is not really my bedtime reading. But every time I read it, I find something else. We have discussed it in overall terms and ACTPLA's response is: "Well, it's not a mandatory requirement. It can be judged on criteria." But the problem is when you go to criteria it is no longer code complying. So you have to go through a merit track process. Then there is all the extra documentation, the time costs and everything that goes with it.

Mr Winnel: The timing is a big issue. If you have a 600-block subdivision and you

are doing your designs, you have a really big holding cost. So the timing does relate to costs and it relates to our ability to respond in a timely manner to surges in demand as well. So it is not irrelevant; it is not just a bit of a gripe.

It is not only about affordability either. If you look at where the market is going and if you look at what the really broad goals regarding where not only the government but I think the community are going, there seems to be a growing acceptance of this idea of much more density to enable public transport to work. We have always got these conflicts about the big picture. We all want density, we all want public transport to work, and public transport needs more people to the kilometre than we have got. We all agree on the broad picture, but then when you get down to doing something, "No, you've got to have a minimum yard size, you've got to have a minimum block width."

When you look at all these things, they are all diminishing our densities. And it is not only about affordability. People's lifestyles are going in only one direction. They are going towards denser living. If you hear the talk in Sydney, the talk is that Sydney is now a city going up, not only because of affordability but because people have a different lifestyle. A lot of them are two professionals, a lot of them are single people in a house—30 per cent of houses with one person.

There are a whole lot of reasons driving density. All of these regulations are pushing us back from delivering the environmental agenda of greater density to service public transport, minimise energy usage and so on. So we have got conflicting goals of government. Governments set these goals and we all agree on them, and they are pretty much bipartisan and they are not that controversial, but we then have all of these regulations pushing back density and pushing back affordability.

It is about lifestyle change. It is not just about people on low incomes. There is a trend to live in smaller dwellings on smaller blocks of land. It is the trend for the first time. In Sydney, for example, it is the first time in 70 years that we are seeing more people per house. We are seeing less square metres per person. For 70 years it has been more and more, and Canberra leads the way with an average house of 240 square metres. It is about the most in the world. If you want to read market trends, they are going to go in the other direction, with less space per person and significantly less land. And they are market driven by lifestyle and affordability. So when we talk about all of these regs, we are not talking about creating slums; we are talking about responding to the environmental agenda and responding to market forces and people's lifestyles.

Each of these issues that John raises has the same theme. It is about affordability but it is also about density, public transport and lifestyle changes to make sustainable cities.

Ms Pratt: Just picking up on Bob's point, I think that is only going to continue with the impact of the carbon tax on electricity prices, transport prices and those sorts of things. With respect to that trend that Bob talks about—denser living, urban infill and things—we are only going to see that continue, and the demand for a different way of living will continue. I agree that some of the provisions in here, particularly around existing suburbs, around RZ1, RZ2 areas, do seem at the moment to be pushing against that, rather than working with those trends.

THE CHAIR: Mr Kenworthy, did you have an additional point?

Mr Kenworthy: No, that has covered those key items. I have some other issues that are a little more pedantic and are not really covered in 306 but that do affect the development process. There is the issue of definition of the gross floor area in buildings, and particularly multi-unit. In the ACT we seem to have three definitions. There is the Property Council's, which is the industry definition that is used Australia-wide. There is the Surveyor-General's definition, which impacts on the unit titling process. Then there is the act that governs the sale of housing, and it has different criteria for ensuring GFA, in that it is larger than what the Surveyor-General would come up with in the unit title.

Ms Pratt: It is a definition in the crown lease, John. In each crown lease, there is a definition and sometimes they vary between crown leases.

Mr Kenworthy: So there is a lack of consistency. I would have thought that with DV 306 there is actually an opportunity to bring them all into the same definition. It could clear up the problems. In particular, I refer to the definition regarding what the Surveyor-General adopts for unit titling and what the sales document adopts. It can often create animosity and a dispute between buyer and seller, and we could avoid that by having a consistent definition.

Mr Winnel: And we are arguing for the Property Council definition, aren't we?

Mr Kenworthy: I think so.

Mr Winnel: Some of the definitions limit your development more, too, without any real logic. That is why we would like to see the Property Council's definition adopted, because it seems to be in widespread use nationally. Why should we have definitions that actually constrict your development area without some rhyme or reason?

MS LE COUTEUR: In your submission you talk about balconies and basements.

Mr Kenworthy: Yes, I will come to that now. With balconies, we have the problem that if a balcony has a wall on three sides, it is included within the GFA of the building. This leads developers and architects to express the balconies so they are external to the building. So you have all of these little balconies jutting out all over the place. If the three-side thing could be revised, people will make better use of their balconies because you could create a winter garden or something similar in it, which comes back to the issues of sustainability. You could get much more variety in the architecture, and it just provides more opportunities to end up with better aesthetics and a better living environment. I understand that the reason why the definition was adopted as including the GFA was that people occasionally—maybe more than occasionally, I am not sure—used to fence them in, so that it effectively became a room. The intent was to prevent that happening. But I am not sure that that works.

Mr Winnel: They have to get a DA to enclose it; otherwise it is an illegal structure. So it is not like government does not have control over the enclosure of balconies. It just seems a really heavy-handed way of dealing with it and it impacts on your ability to design a decent building where the balcony is integrated into the design instead of just being tacked on everywhere.

Mr Kenworthy: The other item with GFA is the issue of basement car parks. At present, where a car park is less than a metre, the top of it, so that the floor level of the building is less than a metre above the natural surface of the site, at the time of lease issue, it becomes a basement and it is included in GFA. We think the definition should change such that the metre is fine but it should reflect the finished surface levels of the development rather than natural surface at the time of lease issue.

Mr Winnel: You can buy a site with a very distorted set of levels because of some previous excavation or something, and you are governed by the way the site is, not the way it should be. You cannot fill in a hole in the site because you are changing the natural ground level. This is an absolute nonsense requirement that has caught us a couple of times. Your design is under the control of ACTPLA, so you design your finished levels to be appropriate. They can knock you back if you are trying to distort the design so that you gain some advantage out of it. But you should be able to do your designs in a logical manner and not be inhibited by a bloody hole in the ground, some rock outcrop or something which distorts what your ultimate design is most logically going to be. But they will not look at that; they are going to refer back to the natural ground level, which is just the shape of the site when you buy it.

Mr Kenworthy: With the other issues in the Property Council's submission, I think most of them are self-explanatory. With respect to the last item, item 5, regarding Actew having to approve stormwater things, that is in there by error. That was in an original submission that we put to ACTPLA, and ACTPLA acted on that and revised the requirement in the version of 306 submitted to the Legislative Assembly. So that last clause is irrelevant.

MS LE COUTEUR: One win!

Mr Kenworthy: Everyone agreed with us. I have some other issues that were not in the Property Council's submission that I would like to bring up. The first is that, when a developer goes to auction in the ACT, we buy a greenfield subdivision with a concept plan in place. It would seem that it would be more sensible, rather than having to go through a public notification and exhibition period for a detailed estate development plan, to adopt the same process that we do for code-compliant housing. If there is a house design that is code compliant, the certifier can sign off. There is no process to go through. It is straightforward, it works really well and it has been a really positive innovation introduced in recent years.

However, in a subdivision, we still go through the same process as if nothing was done previously in the way of planning et cetera. So we go through a detailed estate development plan. It is publicly notified and exhibited. That provides the opportunity for everybody to have another go at it from the point of view of comment et cetera. More importantly, if any comment is received, whether it be positive, negative or whatever, another 28 days are tacked onto the end of the process, just in case someone who has commented wants to lodge an appeal against the outcome, even if they have supported the proposal. That seems to be, once again, an unnecessary procedure.

When 306 comes into effect, there are quite detailed prescriptive requirements for the estate development plan and the design of the subdivision. It would seem that if a

design is fully compliant, then we should go through the same process as with compliant housing. However, if it is to be judged on criteria instead, once again, it would go into a merit-type track. That is really not covered in 306 but it is something that could be considered.

When an estate development plan is created, it is circulated amongst a whole group of agencies. In the last one that Village Building company carried out for stage 1 of Ngunnawal 2C subdivision, it went to 22 agencies. It would seem to me that nine of those are totally irrelevant. In fact they did not even respond or they put a nil response in to the circulation. The agencies involved would have substantial input into the master planning or concept planning stages. They include the ACT Department of Health, the department of education, strategic city planning and design, infrastructure planning, land policy, leasing, sport and recreation, transport planning and projects, and the territory plan variation unit. These should be irrelevant to the final process. They have had plenty of opportunity to have input at the concept plan stage.

This is wasting government resources in that people are having to read the estate development plan. A typical estate development plan, even for a small subdivision, might involve 200 engineering and landscape drawings et cetera and a document that could be anywhere from 200 to 400 pages. Somebody is either ignoring it or sitting down and reading all of that stuff. It just seems a mis-allocation of public service resources.

Mr Winnel: It is not that we are saying they should not have an input, but their input is up front. It is either agreed to or not agreed to at that stage by ACTPLA, and once it is agreed to or not agreed to, our job is just to conform to it. But what are they going to do? Have another go at it? They are in there at the policy stage—what the overall concept of the subdivision and the area should be like. Once those decisions are made, why do these bodies keep commenting again? If they make a comment that is not consistent with the concept plan, it is not going to get anywhere. Once the concept plan is done, those broader issues have been dealt with. So it is just a process to consume their resources, our resources, our time and our holding costs.

Mr Kenworthy: The other items I will bring up are fairly pedantic details that come out of 306. R10 part (c) of the subdivision code requires a shared footpath system to be built in front of any multi-unit site of more than 10 units. You can then revert to a normal footpath when you get to the end of that block. So you could have a normal footpath 1.2 or 1.45 metres wide. Then you go to two metres in front of the block of units. Then it reverts back to the narrow footpath again. That just seems to be a bit of a nonsense. It leads to inconsistent footpath widths and it does not really achieve anything. Either the whole street needs a larger footpath or the whole street should have the narrower footpath.

R50 does not allow compact blocks to be built on blocks where the slope is more than 10 per cent. On a 10-metre-wide block, 10 per cent is one metre. That is really no big deal in the construction of it. In fact, in a lot of the work that Village Building have done out at Macgregor, they would not be able to comply with that requirement.

MR COE: And Molonglo as well, I imagine.

Mr Kenworthy: Molonglo would be a nightmare for small lots. So it either means you cannot have small lots in these areas or you have to find another solution. It just seems that very prescriptive 10 per cent is not required.

Mr Winnel: Sometimes you can cut and bench—use retaining walls and you reshape to a certain extent.

MR COE: Which can be quite attractive as well.

Mr Winnel: It is a real nonsense. We should have a mechanism in between these formal regs. There should be a way of discussing these things as they arise, and not just waiting for a formal new draft variation to the territory plan and so on.

MR COE: That is exactly what the Planning Institute said this morning—that having some forum before it got to this stage, whereby things could be put into the system, would help avoid getting to the last minute and having all these changes proposed.

Mr Kenworthy: Rule 53 states that all dwellings or multi-unit sites must face a public road or public open space. The criterion says they must face either a public road and open space or a private road within the development. The two just seem a bit of a mish-mash. Just a simple rule that allows both to occur would be fine, and the criteria become irrelevant. It is just poorly expressed.

With respect to rule 59, where you have an area where you need surveillance blocks in a street, it requires a room with a window above a garage. This is referring to laneways, not normal streets. You can actually look out of a window at ground level and see the street. There is no need to go to a two-storey development. This is very prescriptive. It is saying that every 50 metres you have to do a two-storey building, rather than single.

To give an example, the project that Village Building did under the government's demonstration housing project at Franklin could not be built with this rule in place without putting extra little two-storey blocks every 50 metres down the street. Once again, surveillance is fine, but it does not have to come from the second storey. That is probably all the issues I wish to raise.

MS LE COUTEUR: I assume, given what you said, you basically think we should pass 306 but that there should be some changes to it?

Mr Kenworthy: Could you repeat that?

MS LE COUTEUR: You think 306 should basically be adopted with the changes you have gone through?

Mr Kenworthy: I think 306 is fine from a new development point of view. I have very limited experience regarding its impact on people involved in redevelopment in existing suburbs, or people carrying out extensions to housing et cetera. Other industry organisations could probably present a better case for the impact on their members' work.

Mr Winnel: We understand they have some issues. We have not addressed them. We are not saying there are none. We have just addressed the new housing issues.

MS LE COUTEUR: The other new housing issue I would like to talk about is solar access. The MBA when they presented were very much of the view that solar access rules were going to mean that dwellings would be at the northern end of the block and you would end up with the private open space being perpetually in the shade, or always in the south, and that is not necessarily the best outcome. Do you have any views on that? Is this what is going to be enforced?

Mr Kenworthy: Yes, it will lead to that sort of development because under 306, where the private open space is to the south, east or west of the building, it is required to have 50 per cent of the area, I think, or maybe three metres width—I am not sure—that has three hours sunlight in the winter solstice. That means that if you have an area to the south of the house that has direct access to a living area, you can meet the solar access requirements by just having a larger backyard. In fact I am seeing that happen in a lot of projects. When you have a house that is on the south side of an east-west street, particularly on small and compact blocks where you have limited block depth, that is probably the only way you can achieve the solar access to it.

MS LE COUTEUR: Do you think that is a reasonable outcome or is there any other, better way of doing it?

Mr Kenworthy: I think you have to decide whether solar access is the key item or whether energy ratings and performance of the dwelling are the key items on it, because the two can oppose each other. Personally, I think solar access is good, because I like the idea of a veggie garden in the backyard, but I do not think it should be the paramount item in every case. I think each house needs to be looked at on its merits.

Particularly on very small lots, there are the requirements for solar access, energy ratings and private open space on a block of land that is really no different from an apartment in some ways, or a townhouse, where you have a totally different set of rules. Maybe on very small lots, say 250 square metres and less, the rules that are applicable to apartments would be more applicable to those. If you do a townhouse development on a block of land, you will achieve a yield of one dwelling per 260 to 300 square metres, and it is a multi-unit site. The only difference is that this has an individual lease, rather than being part of a body corporate, and it would seem sensible that the same rule should apply to both.

MR COE: If we go back to Ms Le Couteur's first question, does the Property Council believe that the proposals for estates which are included in DV 306 should be passed?

Mr Winnel: We are supporting 306 as it relates to new housing estates, with the provisos that we put to you. We have pretty much got agreement with ACTPLA in our discussions with them before coming here that they do not really have a difficulty. They said they will be presenting to you and they will have a look at these issues and try and have a positive response when they appear before this committee. Our provisos are that we just have not looked at that redevelopment issue. We are not speaking for people who are proposing redevelopment of housing.

MR COE: Yes, sure.

Mr Winnel: We just have not had time—

THE CHAIR: You are talking about new estates.

Mr Winnel: Yes. Did we see it as an improvement, John, subject to these, on the existing—

Mr Kenworthy: I think overall it is. The big negative that comes out of it is that, once again, it is another change to the planning laws. Smaller builders who spend their time out in the field rather than in the office simply cannot keep up with the pace of change and this plethora of documents that keeps coming out all the time with the changes. It makes life very difficult for them. With 306, for instance, you get a lot of smallish builders that might build 10 or 15 dwellings a year and that bought blocks of land to amalgamate in the older suburbs. All of a sudden they found that they cannot do it. They cannot do anything. It has a huge financial cost to them. So there are negatives from that point of view. It would be nice to have a document that stays in place for four or five years, rather than changing rapidly.

MR COE: If the amendments that you suggest are incorporated and the part of DV 306 which relates to estates does get incorporated into the territory plan, is it going to change pretty much anything that you are not already doing, in effect? Are we actually going to see any significant differences to what is being produced at the moment or is it just going to be supporting what is happening in the industry already?

Mr Kenworthy: I think it would largely support what we are doing now.

Ms Pratt: Is that because you have already partly made changes knowing it is on its way, John?

MR COE: Or is it because you are already complying with best practice regarding the solar aspect or whatever?

Mr Kenworthy: The Village Building Company as a developer has always tried from a design point of view, and with solar access and sustainability issues, to keep a little bit ahead of the legislators. To that extent, in the west Macgregor project six years ago, we voluntarily made it compulsory in our initial lease and development conditions that every house had solar hot water. This was before there was any legislation introduced to do that.

We looked at things like solar access. We voluntarily entered into quite major on-site building recycling activities to try and eliminate waste going to the tip. We did not quite succeed but we would succeed with 95 per cent of it. So we have always supported these things. We constantly review what is happening in cities like London, which have building rules now that require a zero carbon footprint. We try and incorporate a lot of those things into our designs up-front. So we tend to be a little bit ahead of the legislators.

Mr Winnel: John, I think the question is: from an industry's perspective, does the introduction of 306 improve or give us more flexibility in any way other than what we enjoy at the moment, from an industry-wide perspective?

Mr Kenworthy: It will make the other industry participants think a little harder and a bit more extensively about what they are producing. But for the two or three leading land developers, I do not think it has any real impact one way or the other.

THE CHAIR: That seems to be the extent of the questions at the moment. I thank all of you for your presentations this afternoon. We will be sending you a copy of the transcript, and you can get back to us if you find there is anything that has not been picked up properly by Hansard.

Mr Winnel: I think we said we would send you—you made a note of that—one piece of information.

THE CHAIR: Yes. The secretary can contact you. In any case, we made a note of that. It is on notice. We will remind you, Mr Winnel, of the matter that you said you would get back to us on. If you have any additional notes that you referred to, Mr Kenworthy, this afternoon, that the Property Council would be willing to share with us, we would appreciate those as well—those points that you were making, if you do not believe they are reflected adequately in the submission. It sounds like they are, but just in case, that is what we need.

Mr Winnel: Can I just point out one thing that is in common with a number of the points that we did raise. When you are looking at affordability and cost, it does not relate to the block area for land. It relates to the block frontage. With all of your services, your raw land is only one component. If you look at raw land, it is just the size of the block that counts. But the services, which are a much bigger number of dollars than the raw land, are relating to the width of your block—in other words, lineal metres of road, lineal metres of sewer, stormwater et cetera. When we talk about block widths and when we talk about other things like the minimum block widths where we can put a three-bedroom home, we have not been building them but others have been building successfully on 4½-metre blocks with three-bedroom homes. We do not want to lose the capacity to do that, as we would under the existing 306.

The issues we are raising are aimed at not preventing us from having some narrower blocks for the very bottom end, and for those people who just like living that kind of lifestyle.

THE CHAIR: Yes. Thank you very much for that. We will, as I said, get a copy of the *Hansard* to you, and any other further questions that we have after this. We really do appreciate you coming this afternoon.

Mr Winnel: With those comments we made about Village, we are just drawing on our experience. We are speaking on industry-wide issues but we are drawing from our own experience.

THE CHAIR: Obviously.

Mr Winnel: With some of those experiences, others have them and we do not, like building on 4½-metre-wide blocks for three-bedroom homes. We are still advocating that all the innovations that other people have done in Canberra should be protected in the issues we have put forward.

THE CHAIR: I think we understand that you are appearing on behalf of the Property Council.

MR COE: It is a matter of hats.

THE CHAIR: Obviously all of us have numbers of hats, but the particular hat you are wearing this afternoon is that of the Property Council?

Mr Winnel: Yes.

THE CHAIR: We are going to take a 10-minute break and have some afternoon tea. You are welcome to join us for that. We will then hear from the landscape architects.

Mr Winnel: They probably prefer bigger blocks—more work for them!

Meeting adjourned from 2.29 to 2.45 pm.

REEVES, MR MICHAEL DAVID, President, Australian Institute of Landscape Architects

THE CHAIR: I welcome our final witness today, Mr Michael Reeves from the ACT chapter of the Australian Institute of Landscape Architects, and thank you very much for your time this afternoon. You are familiar with the fact that these public hearings are looking into variation 306 to the territory plan.

I draw your attention to the blue privilege card that is in front of you and the implications that are contained within it and could you please confirm for the record that you understand those implications. If you would like a moment to read it, that is fine.

Mr Reeves: Yes, I do accept.

THE CHAIR: Thank you very much, Mr Reeves. We thank you for your submission and also your supplementary submission. Would you like to make an opening statement or some remarks before we go to questions?

Mr Reeves: Yes. Good afternoon and thank you very much for affording the Australian Institute of Landscape Architects, ACT chapter, the opportunity to present to the committee and to have our say. It is most appreciated. I am appearing here today on my own, as John Easthope, a fellow member of the institute, has succumbed to a funnel-web bite and is unable to attend this afternoon.

THE CHAIR: We do pass on our best wishes to him. Is he in hospital?

Mr Reeves: Yes, he is. John was going to provide us with specific information with regard to the solar provisions of the new DV 306 and some of the perverse outcomes that are arising as a result of the solar provisions. I will deal with them generally without being able to provide the specifics. Both—

THE CHAIR: We have heard from the MBA about some of their concerns about outcomes. Maybe they are the same; they could be different, but—

Mr Reeves: They are different in that from a landscape architectural point of view the block sizes and the block orientations resultant in the estate configurations make for strange urban outcomes as opposed to sort of considered.

THE CHAIR: So, Mr Reeves, given that, do you believe that we need to provide an additional opportunity for that discussion to be held when he is feeling better?

Mr Reeves: Yes. It would be most appreciated if that could be afforded to us, thank you.

THE CHAIR: Yes. We have no idea—looking at the time frames; it is all very tight, as you would imagine, but certainly we are concerned to hear that he has been taken ill in this way.

Mr Reeves: If we were able to lodge a written submission within the next week we

would certainly appreciate that opportunity.

THE CHAIR: Certainly. Members will discuss that and we will obviously get back to you as soon as we can to let you know about that, but please pass on our best wishes to him.

Mr Reeves: Thank you very much. John Easthope is the principal and director of JEA landscape architects and John does a lot of urban planning and estate development planning and landscape design.

THE CHAIR: And reaching under hollow logs and getting bitten by spiders?

Mr Reeves: Yes. It is little known but actually occurs that funnel-webs are quite common in Canberra.

THE CHAIR: Yes. That is a warning to all of us. Do you have some additional remarks you would like to make today?

Mr Reeves: Yes, I would. One of the issues in our submission and our supplementary submission that is of most concern to the Australian Institute of Landscape Architects is that the planning documentation per se is either deficient or has glaring omissions with regard to considering landscape in Canberra.

Prior to the current planning legislation, there was such a document as the Canberra landscape guidelines; it was part of the documentation that was repealed as part of the changeover to the current planning system. This has been lost to the system. This has been repealed and since then there has been no substitution of the standard of information. The Canberra landscape guidelines, when they were in place, had landscape policy for all development—not only government works but also private land development and commercial development. They had policy, they had stipulation on the content of landscape plans for development, they had requirements for qualifications for people preparing landscape plans and they had prescriptive requirements within the landscape guidelines that actually gave meaningful direction to the designers and the developers who were putting forward proposals and to the planning system that was approving development.

The current documentation that is being presented as the draft variation, which will be the manner in which Canberra goes forward, is essentially silent with regard to all of those issues, and that is either a glaring omission or a deficiency in either the scoping of the variation and the development codes or the drafting of the development codes without having a language or a design understanding of landscape and how it fits into Canberra.

Canberra as a city is fundamentally about landscape first and development second. The outcomes resulting from the current estate development codes and the housing development codes that are being proposed will be development first and landscape second.

What I am here to do today is to point out to you that there are omissions and deficiencies in what is currently being put forward and to recommend that there is

work to be done to get to a position of minimum requirements before the landscape is adequately addressed. There are fundamental issues across the city with regard to sustainability and green infrastructure that need to be implemented, and I do not see the current documentation being constructive in addressing those issues or at least giving development any direction forward that is positive, meaningful and a positive contribution to the Canberra landscape.

THE CHAIR: Do you want to talk about the solar orientation now that you were discussing before?

Mr Reeves: Estate development—and the configuration of estates and housing—is quite a complex issue and it deals with a lot of different aspects. The design standards that have been applying to landscape as a part of that estate development have remained virtually the same as Canberra has condensed in size with regard to block sizes and the density of urban development. I am not saying that the compression and the density are bad. I consider it the change that we are currently going through and that what needs to happen is a discussion and community consideration as to how landscape fits into this compressing urban form.

The principal component of landscape with urban development is street trees and the secondary component to that is the urban open space and parks and parklands. I will deal with the street trees first and we can deal with the urban open space after that. With street trees, the street trees are competing with all of the underground services that are currently being located within the road verge. There is not only the lateral trunk mains which run along the verge; there are also the individual block services that run at right angles to that and back into the verge. It is quite a complex matrix and most of the time there is very little space left for street tree planting. In a lot of circumstances we find that the services and the services in the verges are by virtue of protection of those services, which is a necessary requirement; the street trees are being displaced.

Also, as we are compressing the width of blocks, the requirement for offsets to street trees is removing trees. There is a general requirement that a street tree should be no closer than three metres to a driveway, so consequently when you get into the smaller block arrangements, where blocks can be down as narrow as six metres wide, if that is the full width of the block and you put a driveway in there, the distance between driveway to driveway with two parallel compact blocks means that a tree is just excluded. And if there are more than two compact blocks side by side then street trees are not an option. That is just part of the design standards.

Also with regard to the design standards, design standard 23 is the standard that applies to the use of plants in all circumstances in Canberra. It has a particular section that deals with the distance between the facade of a building and the location of the street tree. Each tree species is ranked according to the distance between the facade and the tree. For an oak tree it is a considerably larger distance than for a pear, a plum and the smaller trees that are being used. Just as an example, street verges from the new estate code are either 5.5 or 6.25 metres wide as a minimum. If the tree is located 1.85 metres from the curb and the remaining distance from the tree to the lease boundary, if you add the four metres building offset distance it means that trees that you are allowed to select for those streets fall into the 10 metres tall or less.

Consequently, when you are looking at new subdivisions with four-metre offsets and minimum width verges, the size of the trees that you are able to select is shorter than the allowable building height for the houses on the lease. So the result is that buildings will be the dominant form in the landscape and the trees will be the furry little sticks in between the houses. That is one of the things that need to be taken into account with regard to the discussion and that at the moment is the construct of the rules that are inherent in design standard 23. The quickest way to resolve that would be to change the rules and to say, "Okay, we accept that the trees are going to brush up against the front of your house and we are going to allow a taller wider tree into the spaces where we are currently mandating a smaller, shorter tree." That is something that needs to be taken into consideration.

Another thing that needs to be taken into consideration is that the new solar access provisions for subdivisions specifically preclude non-deciduous trees from street tree selection, but that is a bit of a moot point really, because there is no way in the world that you are going to fit a large eucalypt into the design constraints that are imposed by that, because most of the eucalypts require a larger verge than the minimum that is actually required by the standard and the width of the tree that is required by the tree is substantially greater than the distance between the facade and the available location for the street trees.

MR COE: Do you believe this information is known by the relevant government authorities?

Mr Reeves: I have been a member of the consultative group that has been advising the ACT planning authority from the start, when draft 301 and 303 were prepared, through the draft 306 consultation process, and at all times during this process I have been vocally saying that these are the outcomes that this is going to produce and that you can either take what I say or you can continue on with this compression, and that the Canberra population needs to be aware that in adopting these new design guidelines we are choosing to have a landscape character which is very different from what we have enjoyed previously.

MR COE: I imagine there is always going to be a discretion in this sort of area, but with regard to new estates, at the moment, do you think the plantings that have taken place and the species that have been chosen have been appropriate?

Mr Reeves: Where you are in affordable housing and the blocks are minimum standard, the streets are minimum width and the desire is to achieve an affordability outcome, the compression of the estates is resulting in much smaller trees being located in the verges.

MR COE: But are they appropriately choosing smaller trees or are they choosing trees that are best in other areas, that are simply going to die or just not prosper?

Mr Reeves: The trees will grow; there is no doubt whatsoever. What I am pointing out to you is that the stature of the landscape that will result is lower than the heights of the roofs that are allowable. This is design minutiae; yes, we can compress to a certain extent. The ramifications of that compression are that we get a landscape

character which is very different from what we have had previously. The compression is a result of the current rules. A resolution of the problem may be to change the rules. It may be ActewAGL, in the manner in which they service a block.

At present the separation distances between the services as they are spread out along the block that feed into the blocks are based upon old standards that were adopted when a block was 25 metres wide. You could have three metres separation between your sewer and your stormwater, because you knew that when you dug a hole deep enough to get to your sewer tie you needed to have that width to have a safe work environment, and that still remains the case. When you dig down to do your stormwater tie you still need the same size hole to have a safe working space. But, in having a large hole, and a large hole, and your water metre, and your electricity supply and everything else, and the size of those safe work environments remaining the same, as the block compresses the safe work environments compress and what you are left with is a very small area of opportunity to plant trees. That opportunity to plant trees is then compromised by the width of the block and whether you get your three metres separation between driveways and also separation distances from street lights and mini-pillars.

Electrical infrastructure is exactly the same as it was however many years ago when blocks were 25 metres wide. Electrical demand is now that much greater. Whereas once you used to have a mini-pillar supplying six blocks, you now have mini-pillars supplying four blocks, because the mini-pillar has a certain capacity and the greater demand for electricity from split-system air conditioners and everything else that goes with them means that the demand for electricity is that much greater. When you put a mini-pillar on a verge there is a four-metre separation distance on either side of the mini-pillar that Actew regulate and you are not allowed to plant any trees in that space. So, if you have got two not compact blocks but even larger size blocks, and you have a mini-pillar in between—no tree.

If you have a street light, TAMS and asset acceptance are becoming less rigid. They are now prepared to accept that a tree should be no closer than the mature width of the tree to a light standard, and that makes sense: streets need to be lit, they need to be safe environments, they need to perform to a certain standard. Consequently, when we are using smaller trees and narrower trees, they are actually allowing us to encroach closer to street lights than we used to be able to. It used to be mandatory; you were not allowed closer than six metres to a light pole, which meant that if there was a light pole in the front of your block—no tree.

Mini-pillars are the same infrastructure as 20-odd years ago when there were 25-metre blocks. If you had a mini-pillar on the front of your block when you had a 25-metre block, you could have four metres offset from your mini-pillar—plenty of space to plant two trees and a driveway and all of your service connections. With six metres wide or even 10 metres wide, those bits of infrastructure start displacing trees.

MS LE COUTEUR: Do you think that the only solution is more space, bigger blocks, or can the service providers do—

Mr Reeves: No. Larger blocks and larger verges are not the solution because it is the infrastructure that is in and amongst it and it is the manner in which it is configured

that actually displaces trees. If the sewer and the stormwater and all of the lateral services were either under the road pavement or along the back fence, carte blanche, you could plant as many trees as you like.

MS LE COUTEUR: Or could you put them closer together under the verges?

Mr Reeves: I beg your pardon?

MS LE COUTEUR: Could you put them closer together but under the verge? I can see you—

Mr Reeves: Compressing the service ties is not an option because the compression of the service ties goes back to a safe work environment and it is also a case of how close do you want your water supply to your sewer connection. That is a function of public health; ActewAGL can advise you with regard to how close those sorts of facilities should be.

MS LE COUTEUR: But presumably if it was going to go underneath the road, if there were any issues, it becomes considerably more expensive and inconvenient to fix any issues with your services if they are sitting under the road as well?

Mr Reeves: Yes, there is a cost involved. That is the recognisable cost. The benefit is that you have green infrastructure, you have shade, you have decreased urban temperatures and you have a very low occurrence, high cost to pull up a road or pull up a driveway to attend to a service failure.

I am a director of dsb Landscape Architects. dsb Landscape Architects provide services to the Village Building company. We have provided the landscape design for the Watson fair project. That particular project is a community title project and as such the location of the services is at the discretion of the developer because the developer is responsible for the maintenance of those services. We have put stormwater and sewer down the street. We have put all the services that tie into the blocks either immediately adjacent or underneath the driveway. The consequence of that is that we have narrow blocks and we have a street tree in front of every house.

MS LE COUTEUR: That is very good. During afternoon tea you were also talking about people's attitudes towards trees and some people not being very supportive particularly of native trees. Is there anything we could—

Mr Reeves: Native trees are just not appreciated by residents. They have a very negative attitude towards them and at estate development time when trees are being put into the ground more often than not you will find a native ripped out of the ground and thrown across the paddock. That will be repeatedly done until the contractor throws up his hands in horror and says, "No more!"

There is a process whereby as part of the estate development completion the residents are then recommended to the city rangers and parks land and conservation, whatever their current name is, and they can apply for exemption from a street tree. The consequence is that the minute that resident moves from that house—and currently house ownership is on a seven-year lifecycle or seven-year rotation—at the end of that

seven-year period, when they leave and the next resident comes in, they say, "Where is my street tree?" It is not there. It is not considered to be a public asset and a city asset. It is considered to be at the discretion of the current resident.

MS LE COUTEUR: Do you find the same attitudes towards deciduous trees? Are people happy to have deciduous street trees?

Mr Reeves: People are very happy to have deciduous trees.

MS LE COUTEUR: Is winter shading the reason why they have got it in for eucalypts?

Mr Reeves: There are multiple reasons why they choose not to have eucalypts. They consider that they drip on their cars and ruin the paintwork but I would consider that a falling branch of a eucalypt would do more damage to a car's paintwork than that. They do not like the litter. Eucalypts drop litter all year round, whereas the deciduous trees just do it once a year. There are many reasons why people consider them inappropriate and it is to the detriment of the Canberra landscape that the attitude towards native trees is such. It is like people go down David Street in O'Connor and go, "Wow!" The minute you plant the same tree in front of their house in a new estate, their immediate response is to pull the tree out.

MS LE COUTEUR: Are they generally happy to have trees in the new estates? I have also heard, not from you, that some people complain that they do not want trees at all because if there is no tree they could park their car there.

Mr Reeves: As I said, I am a director of dsb. dsb provides landscape services to the Village Building company on a number of other estates. The current large one is Brindabella estate at west Macgregor. It is the standard servicing, and street trees apply. We find that we are managing to get in about one tree for every three blocks because of services and everything else that become part of the design consideration. We actually get people, when the contractors are going around putting in all of the street trees, come out and say, "Why don't I have one?" And when you point out, "I am sorry but there is a sewer manhole there or there is a light pole there or there is a mini pillar there or there is some other reason why the design rules say, 'Sorry, not on this footpath'," they are usually disappointed.

MR COE: Who is enforcing these regulations? What is stopping them going out and buying one and planting it?

Mr Reeves: There is nothing stopping them going out and farming them.

MS LE COUTEUR: Theoretically TAMS—

MR COE: Yes, that is right, theoretically.

MS LE COUTEUR: But no-one is—

Mr Reeves: The reason the rules and everything are there is for the protection of the services. It is to ensure that trees are not planted over the top of services that may, at

some point in time, damage the service and stop the service being provided to the whole street or to that block.

MS LE COUTEUR: But I thought with the water-based services at any rate, with the new PVC piping, which was what we were talking about earlier, the roots cannot get in anyway.

Mr Reeves: I do not disagree with you. I have had that argument—

MS LE COUTEUR: In this case, presumably you could have a tree on top of them if they cannot get in anyway. I am in an old suburb and it does make a difference. They dig them up on a regular basis.

Mr Reeves: I do not disagree with you. I have had this argument with service providers on numerous occasions. My argument is: "So, there is electrical cable there. The electrical cable cannot compress. It cannot be sheared by roots. It cannot be damaged, as far as I can see. Why can't we put a tree on top of it?" They say, "There is a standard that says you are supposed to be so far away from services."

MS LE COUTEUR: Is this an Australian standard or is it just an ACT special?

Mr Reeves: Sorry?

MS LE COUTEUR: Is this is an Australian standard or is it an ACT-particular rule—the rules that stop us planting street trees close to services, I mean?

Mr Reeves: Way back in the NCDC period there was a standard cross-section for verges. And within that standard cross-section each service was allocated a particular distance off the back of the kerb and street trees were allocated a particular location off the back of the kerb and that was two metres off the back of the kerb. It also corresponded with any trunk water main location, if needed. And each of the services was allocated a particular location and the tree was allocated its location in there. The decision by the service providers was that they were quite happy that a tree in that location would be tolerable with regard to all the services running up and down the street. But that was in the days when your stormwater and your sewer were up the back and the only things that were in the front yard were Telecom and the water main.

MS LE COUTEUR: And as far as you are aware that is not an Australian standard that requires this sort of space? Is there an Australian standard for how you do this?

Mr Reeves: I am not capable of saying yes or no, I am sorry.

MS LE COUTEUR: From what you are saying, it sounds like we are allowing far too much space for the services and not enough space for the trees. I am certainly not an expert in any of this stuff.

Mr Reeves: There is a requirement for enabling servicing that enables us to enjoy urban development.

MS LE COUTEUR: Absolutely, yes.

Mr Reeves: There is a requirement that we need to keep our trees to keep our soul blessed. We cannot do without either and we need to find a middle ground that enables us to accommodate both.

THE CHAIR: Could I go to the matter of the solar access and how much room, perhaps, there is on the actual block itself for landscaping. Was that an issue that was going to be raised as well?

Mr Reeves: One of the things that I would like to point out is that, as part of the consultative process for 301 and 302, the consultants that prepared the solar access provisions for ACTPLA came in and had a chat with the group to discuss what they were doing, what they were trying to achieve and everything else like that. My one question that I fronted up and asked them was, "Have you taken into account the fact that there might be a street tree in front of these houses?" And their response was no. "Have they taken into account that the block of land might be facing south?" They said no.

All of the solar provisions within DV 306 are currently based on a north-facing block or a variance to a north-facing block, and that is a worry because ACTPLA and Canberra, necessarily, require that we have streetscapes with street trees and the compression of the blocks and everything means that all the houses are that much closer to the street trees when they are there and the solar provisions, necessarily, are based on a block of land facing north, with nothing in front of it.

I believe it needs to be tested further to see whether or not it provides the benefits that it is seeking. I am not saying it is wrong. I am not saying it does not do what it is supposed to do. But I would like to see it tested.

MS LE COUTEUR: Another area I would like to talk about is permeable space. You specifically talked about planting areas. This is something we talked about with the Planning Institute earlier today, on two issues. The first was whether it is a sufficient quantity. The other was whether this is in any way enforceable or achievable. And we ended up in a discussion with the Planning Institute where they were feeling that as it was fairly unenforceable it was maybe not even particularly worth having as a rule. Have you got any views about appropriate amounts and how they can be enforced?

Mr Reeves: The Canberra landscape character has developed and we have an expectation that we have greenery around all of our urban development. The amount of greenery is something that each individual is comfortable with. Some people like plastic grass and clear spaces all the way out to their property boundary. Other people like jungles. It is a matter of choice.

One of the things that we need to take into account as part of the planning rules is to ensure that there is an expectation that urban development contributes to the landscape character of Canberra in a positive manner, and that means planting trees and planting landscape. How much they actually choose to do is perfectly up to the individual landholder, but at a point in time where we have a development proposal and a planning authority interest and a public interest being applied to it there should be a minimum standard applied.

I believe that the minimum standard that they are applying at the moment through DV 306 is insufficient. Whilst providing an opportunity for a planting area without actually providing a requirement to plant anything is less than what I think we should be expecting as a community.

MS LE COUTEUR: You referred here to 20 per cent of the total site area. Do you have views on any ways of actually ensuring that it is planted, given that ACTPLA looks at these things at the time of construction and changes to landscaping often happen six months after?

Mr Reeves: ACTPLA can only look after what is actually done at development and until unit titling. As part of the unit titling process, ACTPLA inspect the sites when they are completed and compare what is actually installed to the landscape plan that is provided as part of the development application process. ACTPLA officers are usually particularly vigilant with regard to ensuring that what is approved is actually installed.

What the resident does with that, post unit titling, is a private property issue. That may be infringed upon by other legislation if the community chooses to do so. At present we have a public interest requirement as part of the planning and development process that landscape plans are included as part of residential development from RZ2 upwards and I believe that public interest should be used to make sure that urban development, in whichever form it goes forward, makes a positive contribution to the landscape character of Canberra.

MR COE: You mentioned earlier the impact on urban open space. I wonder whether you could expand on that?

Mr Reeves: Currently with new estates you get a concept plan established by ACTPLA and that is put forward as part of the deed documentation for the developer to implement. It is usually enforced as part of the design acceptance process by TAMS and through the NEP process. One of the things that are particularly of concern is that, where previously neighbourhood parks were defined as play spaces and playgrounds and facilities and barbecues and furniture and bubblers and bins, the new standard says it is anywhere between one and half a hectare of space and it has informal free and innovative play as a range of unstructured recreational activities. What that means to developers is grass, and it is hard to argue that grass does not satisfy that performance criterion. It is an unstructured play space—you can kick a football, you can run around, you can ride your bike. But is that the minimum standard we wish to apply to Canberra's neighbourhood parks?

Neighbourhood parks in spaces where we are compressing the urban development and the urban spaces become more and more important to the Canberra community. I would suspect that as we compress and as we provide less and less opportunity for kids to run around a courtyard or a private open space as opposed to a backyard, we as a community should be holding our heads up high and saying, "We need to provide people with interesting, exciting, challenging and thought-provoking spaces in which to play."

MR COE: Do you know any good examples of that that have been developed in the last few years?

Mr Reeves: The informal free and innovative play is something that is being widely pressed by city parks in the redevelopment of old playgrounds across the city. Where you used to have a few trees and a bit of playground equipment in soft fall, they are now going back and planting beds beside the playgrounds so that there are areas for kids to run around in. They are putting in rocks and logs and boulders and providing interesting new spaces, a sort of extension to the go-down-the-slide-climb-up-this-structure-type play to it being open ended and free. Around town the government and we as a community are adopting these standards and upgrading all of our play equipment and our neighbourhood parks in old areas of Canberra. But as far as the new design standards for the new areas of Canberra are concerned, "A patch of grass will do you, thank you very much."

MS LE COUTEUR: I have heard from some developers that they have tried to have more innovative play areas or public open space and that TAMS have said no because the maintenance requirements would be too great. Have you heard this?

Mr Reeves: Yes. It is a fundamental problem with the managers of ACT public spaces that introduction of new and different products, equipment, surfaces, treatments—everything—is not taken up. They look at it and they say: "This just adds another product or another thing that we need to maintain. And if we can do that and narrow the range of stuff that we maintain, then we control our costs." If you propose an innovative pavement or if you propose to put solar powered lights in the pavement, their immediate response is: "How do we maintain it? How much does it cost to maintain it? What is its lifecycle? What do we do with it when it is broken?" You would necessarily expect a prudent asset manager to do that, but, in most cases, those questions are answered with, "Well, we don't want it because we don't want to go down that path." It is not unusual to find that with all sorts of landscape, but we are diverting away from 306. That is a general comment to government about government asset management and landscape design across the city.

So what we really need, at a minimum, is something equivalent to development control plan 42 of Queanbeyan City Council. They have a landscape policy. They have a determination as to what should be in a landscape plan. They have criteria as to the qualifications of people that can prepare landscape plans. They have criteria as to what applies to different levels of development as to who can design it and who can construct it. They also have a requirement that no certificate of occupancy is issued unless there is sign-off that the landscape has been installed to the satisfaction of the designer that actually put it together. If Queanbeyan City Council can do that with a DCP 42—it is 42 or 45, sorry—and they are just a little old New South Wales country council, why can we not do something similar?

THE CHAIR: You are talking about a suburban block, I presume. Do they have similar rules around public open space?

Mr Reeves: DCP 42 applies to multi-unit developments, commercial developments and everything above residential.

THE CHAIR: And parks as well?

Mr Reeves: No, it does not apply to their public spaces. This is for urban development.

THE CHAIR: And there is another set of rules for urban parks?

Mr Reeves: I have not been exposed to any urban park design at Queanbeyan recently, so I would not be able to comment, sorry.

MS LE COUTEUR: Was that rule you quoted just for multi-unit development or does it include single residences?

Mr Reeves: No, it does not include single residences. It includes all form of urban development above single residential.

MS LE COUTEUR: In regard to the problem we were talking about earlier about services and small blocks meaning no street trees potentially, Queanbeyan has not solved that problem with this plan?

Mr Reeves: No, they have not. But DV 306 is seriously deficient or silent on multi-unit development codes with regard to areas of planting zones and private open space and the quality of landscape that goes in to multi-unit developments. As far as landscape is concerned, Queanbeyan have very simple rules and regs that say, "Thou shalt ..."

MR COE: You mentioned earlier that you passed on information through various committees about some consequences of DV 306 and its previous two iterations.

Mr Reeves: They have responded. They changed some of the words in the zone objectives to include a comment that there should be a positive contribution to the landscape in the zone objectives, but they then omitted to provide any rules or criteria within the development guides to actually facilitate that.

MR COE: Do you know whether your experience is similar to that of other people in giving feedback to ACTPLA with regard to this variation?

Mr Reeves: Most of the contributors to the consultative groups on 301, 303 and 306 were disappointed with the process and disappointed with the responses that were provided by ACTPLA at that particular point in time. They had representation that ranged across professional consultant groups, community groups and developers. John Kenworthy, who appeared before the committee earlier, was on that consultative committee with me, and he had similar problems.

It seemed like you were banging your head up against a brick wall. It seemed like they were not listening to you, and it seemed like there was a preordained outcome that had been considered at the very start with regard to where they wanted to be at a particular point in time. There did not seem to be much give and take. I have no evidence as to whether that was the case or not, but participation in the process was frustrating in that we spent an awful lot of time and intention and honest hard work in putting

forward comment on what they were proposing and the response was less than what we would consider satisfactory.

THE CHAIR: Have you got a suggestion for the way that you would prefer the process to be? With the conduct of the reference group, for instance, how could that have been done, in your opinion, in a better way?

Mr Reeves: The collective experience of the people on the consultative group was probably greater than that of the team in ACTPLA that were putting together the documentation. The skills that the ACTPLA team had and the tasks that they were tasked with were very different from the consultative group because we were all seeking to have our particular interests included. I am not going to say that a committee is the perfect environment to thrash out those sorts of things, but it is certainly an area where you can have free and open discourse of ideas, free flow of ideas and acceptance of different points of view. There are better ways. When all sides are open and willing to consider all of the options, then you get a much better outcome than when you have different sides.

We are all people. We are not perfect. We are all trying to do exactly what we need to do within the processes and the resources that we have available to us. At least as part of the process we managed to have a line in there to say "contribute to the landscape character". It is better than not having it there at all.

MS LE COUTEUR: Do you think this variation is worse than the current situation? Accepting that it is not ideal, has it gone backwards?

Mr Reeves: The worst thing about DV 306, the process and the discussions around everything that has been gone through is that, as far as landscape is concerned, there really is nothing other than bluff that ACTPLA can pull when it comes to requiring a particular landscape plan for a particular development. I have been monitoring over the last two or three years the quality of landscape plans that have been submitted. I saw one particular multi-unit development that had three Japanese maples and 46 hebes as a hedge. That was for a 25-unit development in a new part of town. That was the landscape plan—three Japanese maples and 46 hebes as a hedge. You get that end of the spectrum and at the other end of the spectrum you have quite complex and quite well-considered and extremely high-quality design prepared by landscape architects from both within the city and outside the city.

The question is: where should the minimum level be established? We as a community should be out there and championing the Canberra landscape character and saying that we think this is a minimum standard. Where that is drawn is up to the committee but there should be a minimum standard established. There used to be. There was an ACT landscape policy. It said, "We expect this, this and this." There is now nothing similar to that within the planning codes.

When you look at the planning codes and you look at the multi-unit housing developments and you look at the section that says "Trees", under "Environment—tree protection" all it says is, "The Tree Protection Act will apply." But if you make an application to ACTPLA they can override the decision of the conservator and they can do whatever they choose to. Is that the minimum standard that we choose to have

applied to Canberra?

I would contend also that change to the landscape is just as necessary as maintaining the landscape character. There is no reason why you should be keeping a very big eucalypt in a backyard of a multi-unit development block when in five years the eucalypt will die and start falling down and create all sorts of havoc. At some stage when you do redevelopment you have to reconsider that the landscape needs to be redeveloped and needs to change in accordance with the new urban character which is being considered. I am not saying we need to freeze in place. I am just saying that we as a community need to establish some minimum ground rules that say: "This is what we want. This is what we think we should have. This is where we need to be going and this is the minimum standard." It is as simple as that.

At the moment these documents do not help with regard to adding to that conversation or to assist the industry, consultants, developers or end users as people.

MS LE COUTEUR: Your view is that while it is not ideally what you want, if 306 with various changes were passed it would not be backward? Do you think that our answer should just be that this is not getting anywhere positively and we should just say, "No, don't do it"?

Mr Reeves: No. What I am saying is that the provisions that are in the codes as they are currently written are very poor.

MS LE COUTEUR: Yes, that the recommendations in here be revised?

Mr Reeves: Yes. When you get down to criteria 40 for landscape design for the multi-unit housing code and it says, "Planting of trees of semi-mature stock," what is "semi-mature stock"? Why? What are we trying to achieve there? Are we looking for an instant landscape or are we actually looking for a real landscape character? I contend, and city parks would tell you, that you are better off planting a two-inch high eucalypt than you are a four-foot high eucalypt because your potential for growing a real tree is that much greater. If you are planting deciduous trees, then planting something larger is probably a reasonable expectation.

"When you are looking at planting of tress"—they could not even spell "trees" properly—"with a minimum mature height of four metres," that is an out in a big way. That is a shrub. Four metres is not a tree. If we are going to give people planning permission to build houses up to nine metres above ground level, the least we can do is expect that the trees are taller than the houses. By saying a minimum mature height of four metres is a squib. I can show you a bit of bamboo in that courtyard that is taller than four metres. That is not a tree. With "reasonable residential amenity", town planners will tell you that "reasonable" is nothing more than an invitation to go to AAT.

MS LE COUTEUR: We have had that conversation a few times.

Mr Reeves: Yes. There are almost bits and pieces where it says, "We want landscape." Have somebody sit down and tell the planners what they actually should have in those clauses. It is not a case of them having forgotten it and excluded it

entirely. It is just that what they have done is very poorly done. It does not have a policy that they are trying to achieve and it does not have an outcome.

It is like the estate development code. They have something in there that says you are supposed to have 25 per cent shade of all hard paved surfaces et cetera. That is a sop to a sustainability policy without understanding that, well and good, on the north side of the east-west street where you have solar access on the other side of the house, yes, you can plant huge trees and you can shade the whole street. But at the moment that is not allowed by the rules. You could have smaller trees on the other side of the street that are contributing to solar access but are not shading the hard paved surfaces.

There is give and take and pull and stuff like that. We applaud the fact that somebody has got in there and said, "Yes, we need a code that says we need to start shading our hard paved surfaces because we can't continue plugging in split-system air-conditioning systems, chugging down electricity, putting more mini pillars in the street, displacing more street trees and creating hotter and hotter urban environments." We need to be going in the opposite direction.

There are outcomes that can be achieved that are extremely beneficial to sustainability, green infrastructure and all of those things. What needs to happen is that people need to sit down and say, "This isn't helping but we can contribute to this to make it better than it is currently positioned." The people that have put together these sorts of things are very good planners. You go to floor space, setbacks et cetera; they know their stuff. They are brilliant at it. They are very good at it. You ask them about a tree and they go "Er" because it is not in their vocabulary. It is not their design system. It is not something that they are familiar with. They have tried to do the best they can but in doing so they have fallen short. With the assistance of professionals or otherwise that know how the system works, you could probably very quickly turn that around into something that is capable of making positive change.

THE CHAIR: Thank you very much for appearing before us this afternoon. It was an interesting conversation, as you called it. We will send you a copy of the *Hansard* so you can see whether there is anything that Hansard has not picked up correctly. We will also send you further questions, if they arise. We will also look into the matter of whether we should have a further submission from our particularly ill person at the moment, and wish him well. We would like to thank everyone who has attended today and contributed to the committee's inquiry. We will now adjourn this hearing.

The committee adjourned at 3.49 pm.