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

WEDNESDAY, 18 JULY 2012

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

Privilege statement

The Committee has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

"Parliamentary privilege" means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the Committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 9 August 2011

The committee met at 10.33 am.

FOGG, MR DAVID, President, ACT-Southern New South Wales Region, Housing Industry Association; Director, Prostyle Building Group.
SMITH, MR STEPHEN, Planning and Building Service Adviser, ACT-Southern New South Wales Region, Housing Industry Association
BROOKFIELD, MS KRISTIN, Senior Executive Director, Planning, Development and Environment, Housing Industry Association; Chair, Development Assessment Forum

THE CHAIR: I declare open this fifth public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services into draft variation to the territory plan No 306, residential development, estate development and leasing codes. The committee will be holding two additional public hearings on this inquiry during July. Details are available on the committee's webpage or through the Secretariat.

On behalf of the committee, I would like to welcome representatives from the Housing Industry Association of the ACT to the table. Thank you very much for your time this morning, Mr Fogg, Ms Brookfield and Mr Smith. I would like to draw your attention to the protections and obligations afforded by parliamentary privilege and draw your attention to the blue-coloured privilege statement before you on the table. Could you confirm for the record that you understand the privilege implications of the statement?

Mr Fogg: I do.

Mr Smith: I do.

Ms Brookfield: I do.

THE CHAIR: Thank you. We have your submission No 10, Mr Fogg. Would you like to make any opening statements?

Mr Smith: I will actually commence. The HIA represents over 40,000 members nationally who are involved in every aspect of the residential building industry. Our members include builders, trade contractors and land developers, and they are involved in the construction of 85 per cent of Australia's $70 billion building industry.

To date, HIA has been actively involved in the ACT in submitting constructive comments on the evolution of the territory plans. Firstly, HIA reiterates previous comments made in its submissions on 301 and 303. Most notably, the HIA continues to support the codification of planning rules and requirements where this leads to greater certainty, both for the housing industry and for the community. However, the pursuit of certainty through codification should not be seen as an invitation to introduce an additional layer of requirements that are not policy neutral and that come at the expense of housing affordability and innovation.

Codification should produce simplification and streamlining of rules in combination with greater certainty. HIA generally supports the introduction of the previous

codes—DV 301 and DV 303—as the business of land estate development has serious implications for housing development.

The modified structure of the new draft code is supported. However, as previously requested, it is considered necessary that ACTPLA develop a development application guide to further assist industry in understanding the application of the territory plan and to overcome any ambiguity and uncertainty, particularly in relation to the administration of rules and criteria.

Such a guide is already entertained and referenced in the introduction of various codes, but the only document which comes close to this is a quick guide to the territory plan on the ACTPLA website. The document is not comprehensive enough when it comes to outlining the application of the territory plan to allow ease of use by both applicants and the community.

Solar access is a major concern. HIA emphasises the importance that solar orientation of land development plays in meeting the solar access requirements for new housing development. However, the introduction of the territory solar setback envelopes has resulted in a further layer of design complexity and consumer uncertainty. This can be best illustrated by the disappointment of purchasers regarding the limitations and constraints that now apply to pre-purchased vacant land sites. These subdivisions, which were previously designed, approved and constructed with no reference to the proposed solar requirements and hence reflect no ability to achieve an acceptable market return based on an achievable building footprint, should not be penalised by the proposed changes to solar access.

This will require an ongoing element of scrutiny with the control and containment of housing affordability a key issue for government. In addition, there is a fear that solar access will constrain house design and impinge on the rights of owners to enjoy and utilise sections of their land. It may also generate unintended consequences. For example, the solar setback in most cases requires larger blocks to have the south side set back three metres. This creates more living area to the south rather than to the north, which is not an accepted passive solar design outcome. There may also be a major impact on proposed infill block developments where solar access cannot be achieved due to existing surrounding developments, rendering them unviable and, hence, undevelopable.

In respect of secondary residences, the draft variation has nominated a maximum floor area of 75 square metres for secondary residences. HIA considers that this should be increased to 90 square metres or satisfy the single dwelling plot ratio across the site.

I turn to building height. The HIA recommends that overall height criteria be adopted in favour of any limit on the number of storey limitations, as this will encompass the overall desired plan of densification.

The big thing that we have a concern about is in regard to solar access. What is currently happening is that the protection of fence building heights to the south of buildings is only enhancing the right of a neighbour and not the right of the owner of the property. Hence, what is occurring is that you have the person with the last block on the street having the advantage that he can achieve whatever he likes because

everybody else has been restricted to maintain this solar envelope. That is also having a great impact on the design facades of the building structure—of the streetscape.

We believe that generally DV 301 and 303 were quite compliant, easy to understand and should be brought back in. We believe that 306 has not achieved the required outcomes for industry and has become a very over-complex, confusing document that needs to be totally reviewed. On that note, I would like to thank the committee for hearing my submission.

I would now like to introduce Kristin Brookfield to make submissions as well.

Ms Brookfield: Thank you for letting the three of us come along and speak to you today on behalf of HIA members. The first point I would like to make today is that I am actually here wearing two hats. One is in my capacity with HIA as the National Director of Planning, Development and Environment. But the second is as the Chair of the Development Assessment Forum, which is normally referred to as DAF. DAF is a group made up of all state and territory planning agencies, including the ACT, along with all state and local government associations, a number of commonwealth government representatives and a number of industry associations, which includes HIA.

The charter of DAF is to highlight leading practices in planning and to develop guidance and information that may be taken up by those jurisdictions looking for changes and improvements, in particular with a view towards harmonisation.

To this end, the importance of DAF in the ACT and in the debate on the new residential code provisions is worth highlighting. In 2008 the ACT was one of the first jurisdictions to take on the DAF leading practice model for development assessment. A key element of this model is the adoption of different tracks for the assessment of applications based on their complexity and their potential impact on the neighbourhood. As part of the tracks approach, we now have code, merit and impact assessment for applications in the ACT.

Since 2008 the introduction of code assessment here in the ACT has seen applications for single dwellings on residential land that meet the relevant criteria approved in days and weeks rather than months. This is an achievement that should not be taken lightly, and any consideration of changes to the single dwelling code need to be assessed in terms of how they may affect the process as well as the number of homes that can or can no longer be assessed in that way.

It seems apparent to me that the changes proposed under this amendment threaten the viability of code assessment. Wearing both my HIA hat and my DAF hat, I believe this would be a detrimental shift for the ACT in terms of meeting its housing delivery targets and in working to reduce the administrative costs associated with residential building that are ultimately borne by the homebuyer. On this basis alone, HIA would seek the Assembly's support to reconsider the amendments.

The second issue I would like to highlight is what is happening across Australia in relation to housing codes. HIA members need to design and build homes to meet the different housing codes developed by each state and territory. Fortunately, with

improvements in New South Wales in 2008 to introduce a state code, housing is generally required to meet a state code rather than being left to meet individual council codes. In the ACT this has not been an issue as there generally has been a state code, which is pleasing.

But that brings us to the basic issue that we want to highlight with you today. The drafting of the standards and the interaction of the standards in the res code are critical to its success—success in its interpretation, which leads to success in its application. There is a fundamental concept that underpins any res code. That is that the code should provide for around 75 per cent to 80 per cent of single storey dwellings on residential land to be readily designed and built. Neighbours should have equal rights with their neighbours. No one house should win in terms of solar access or privacy, and no one house is more important than the others in the street. Equally, everyone knows that a house will be built next to them and there should be no surprises.

The evidence from HIA members to date suggests that this outcome will not be possible under the amended standards primarily due to the solar envelope requirements. Planners generally understand that there are two ways to skin a cat when it comes to controlling the bulk and scale of a building. They also understand that you do not need to do it twice. Protecting neighbours' privacy and providing solar access to outdoor and indoor parts of the home can generally be achieved through the same measures—controlling the footprint of the house.

The first option is to control the footprint with a combination of minimum front, side and rear boundary setbacks, a plot ratio or a site coverage limit—arguably, you do not always need that—a maximum height and then a minimum private open space requirement. Alternatively, you can use a prescribed building envelope and ensure that that has a maximum height limit.

The first option is used in New South Wales under the housing code and in the Victorian res code. The Tasmanian res code uses front and side setbacks, side coverage and rear setbacks and the building envelope rather than a height limit, whilst the Western Australian r-codes have setbacks, height and open space controls plus a solar envelope, which uses a slightly different metric to the ACT one. In South Australia they use only setbacks and height limits with private open space requirements.

I might also point out here that the ACT was party to the work of the Council of Australian Governments which developed a national template for single residential development released in 2011. The approach taken in that template was also in line with option one.

In the case of DV 306, we are trying to skin the cat twice, using all the setback controls, a building envelope and a second solar envelope. This results in a complex set of rules that cannot be readily understood by the professionals, let alone by homeowners. The intention of the envelopes should be able to be reflected in a single design requirement.

The other aspect that is worth pointing out in the ACT is that you have a complementary code for subdivision design in place. This is not something that exists

in any other state or territory. With the current subdivision codes, there is a requirement that a minimum of 75 per cent of the lots have an energy rating of three stars or more and all blocks must have a rating of at least one star. For the record, that is element 6.2, which is R59 in the current code.

Building on this, provision R60 requires that the building envelopes from the res code be applied to the lots to achieve a minimum solar access requirement in winter that gives north-facing habitable rooms a minimum of three hours direct sunlight on the floor or wall and 50 per cent of the private open space must achieve the same three hours—not the same, but also achieve three hours.

As part of the draft variation, a new estate development code is proposed, and in this the above provisions for solar subdivision will be replaced by a new complex process that seeks to address the same issues. Under either code, the point we are trying to make is that the variations combined are seeking to achieve the same outcome with 12 different provisions being applied. This is just not practical planning in our view.

If we take them to be correct, the variations contend that to adequately control solar access in new houses, we need to encumber them with the following controls: at subdivision stage, the lot layout, block orientation and slope must be assessed for solar access and the blocks must optimise their ability to fit a home on them, provide for outbuildings, open space, vehicle access and parking, balance that with passive solar access for the house and its own open space, and then show there is a capacity to meet the rest of the rules in the res code. That is all in the subdivision code.

Then at the planning stage, the house must meet a maximum plot ratio of 50 per cent, a height limit of 8.5 metres, front, side and rear boundary setbacks, fit within the building envelope for bulk and scale, fit within a different building envelope for solar access to their own private open space and to the neighbour's private open space, provide a minimum area of open space, which is affected by the site coverage, and achieve three hours of sunlight on the floor or internal wall of the living areas in the house. Then, finally, at building stage, the home needs to achieve a six-star energy rating, which also takes into account the passive solar design features.

More controls do not guarantee the right outcome. Surely we can achieve the protection we need for neighbours and the amenity we want for occupants with less controls. We certainly did before this variation and we do in most other states. As mentioned in other representations to the committee that we have seen, it only takes one tree for all of this effort to be for nought in a few years time.

I would now like to hand over to David Fogg, who is the President of the ACT and Southern New South Wales Region, HIA and Director of the Prostyle Building Group.

Mr Fogg: As Kristin said, I am David Fogg from Prostyle Building Group and the President of the HIA ACT. Do you at this particular stage have any questions of the first two?

THE CHAIR: Do members want to ask some questions of the first two or wait until we go on to Mr Fogg?

MR COE: There certainly are questions.

Mr Fogg: Well, just throw them in. My presentation is going to be based on the impact on the building industry from members who have come to me with their concerns with the current status rather than from a policy point of view. I know Caroline and I have had a discussion about that previously, so I think this is more on the record.

So it is the impact of the interim DV 306 on the industry as it stands and, obviously, if it is fully implemented, the repercussions of DV 306. As it stands now, DV 306 means that any new development that comes in is subject to—if we go to RZ2—plot ratios, maximum number of builds per site, site separation and obviously that other one we shall not mention: lease variation charges. So all that has meant that RZ2 as far as small unit developments are concerned is dead in the water in Canberra.

What that does in the long term—certainly for the next couple of years—is that downsizers, relocaters, people living in the suburbs in larger homes on large blocks and wanting to get smaller blocks have nowhere to go except out to the new suburbs. So they cannot age in place; they cannot age in the suburb in which they want to, and they are certainly being pushed to one side. That is a problem, and that is a market that has been quite a popular market in Canberra. I suppose it has also been the most contentious and is the reason why we have DV 306 at the moment.

I was part of the committee that went through the DV 306 talkfests that we had prior to its implementation. Quite honestly, it was a talkfest. It was a decision made, I think, on a political basis where the opportunity was given to community and industry to comment, but the decision had been made before we went through that process. We were just paid lip-service. At the end of the day, it was done and dusted and DV 306 was implemented by those who had made decisions prior to us even saying anything.

That is my personal view. It is not necessarily the view of the HIA, but it was certainly the implication of what I felt from the meetings and the attention given to them by the senior public servants. At the end of the day, this was not consultation by committee; this was decisions made from above. As I said before, it was a political decision for the minorities. We as an industry are suffering accordingly for it. That is all I have to say at the moment.

THE CHAIR: Thank you, Mr Fogg. I will open up for questions. Mr Smith, you said something about it not being policy neutral. Could you point us to the areas where you believe that 306 is not policy neutral?

Mr Smith: Predominantly 306 makes a direct direction of how people have to design and create a particular scape without having the ability for innovation to meet criteria with regard to what they can develop in an envelope. Kristin mentioned before the direct constraints. We already have requirements with regard to a star rating that a house has to obtain to gain approval. To put in place total limitations and constraints on exactly where that has to occur on a particular block is not policy neutral. It is a constraint controlling what people are able to do.

Mr Fogg: I will just jump in there. The implication of that solar access is not just in

your homes. Obviously we are going to have that problem associated with established blocks. Dare I say it, for the last 40 years, very little consideration was given—certainly in the early days of Canberra—to any orientation for blocks. Jennings was the largest builder in Canberra at the time, and their policy regarding putting a block on a site was how good it looked as you drove into the street. So you will see homes that are on 30-degree, 40-degree angles to the block that are oriented nowhere but they look good as you drive into the street.

With that in mind, if you then put solar access and restrictions on to existing blocks, it is going to mean that those who wish to extend their homes in the Weston Creek suburbs, Belconnen, wherever, are going to have great problems trying to meet those requirements. As was pointed out in the MBA's application, even if they were to meet those requirements, it would not take long for them to build a garage with a three-metre side that does not require approval or plant a tree—willows, I think were mentioned—

THE CHAIR: Yes; I do not think that is right.

Mr Fogg: But, at the end of the day, it is something that is very short term and can be easily knocked out by structures that do not need approval.

Ms Brookfield: As to the question on policy neutral, the two amendments—both the estate code and the single dwelling code—increase the number of controls we have to do the same job. So they are not neutral in that sense. We now have a number of additional controls in the single dwelling code for solar design and we have a much more complicated process in the estate code for how you work out the solar access as well. That is probably the simple description of "policy neutral".

MR COE: Do you think there is a perception that, if this goes through, quality of life will improve in these areas? Is it possible to argue that?

Ms Brookfield: I think both personally and professionally that quality of life is probably something that falls well outside the planning system. It is a little bit bold to suggest that by designing a house in a particular way we will dramatically affect quality of life. But I also think it is probably worth explaining that the benefits of passive solar design are something that my experience says are very hard to describe and capture.

This is from work we do in our GreenSmart program that we actively run here in the ACT. People often do not realise that they have the perfect kitchen or the perfect sitting area that picks up the beautiful winter sun and they have the window facing the right way until they leave that house and go to another house that does not have it. And then they go, "Oh, why is this house not quite so good," or vice versa. You do not have to be savvy, but you have to be paying attention when you are walking in and out of houses to go, "This has been designed appropriately for this block and this orientation."

It is something that therefore falls back on us as the building industry and it falls to the codes to do the best that can be done. So the codes have a role in passive solar design, and we are not contending that there should be no controls; we are just

contending that you can get a sufficient outcome for 80 per cent of the cases with some of the controls you already had.

MS LE COUTEUR: Obviously, though, we have not been getting a sufficient outcome with the existing controls. You go around to the new areas and, clearly, facing north was not one of the things in many cases that the builders looked at. Even when I would have thought you could have done it on the block, they address the street. That seems to be, as you said, the Jennings designs. Given that we appear to be failing right now and this is ACTPLA's attempt to improve things, are you suggesting there is a better way? I believe we need to improve on what is being done at present.

Mr Smith: One of the big concerns we have and our members have and the community has is that we have circumstances where there were previous subdivision developments done, and I will highlight Molonglo and Wright. There was a government-organised concentration on being able to get property and blocks released. Then, on top of that, the government came in with a draft variation. So we have consumers who came in to purchase and pre-purchase blocks that are now under the constraints of DV 306 and they have realised that they cannot build to a certain scale because of the limitations and the restrictions placed on those blocks.

THE CHAIR: Not that I am saying that we should put that aside, but we note that, and I think Ms Le Couteur's question is about new estates that may be developed under this code. You are saying that you believe the suggested variation does not work. Ms Le Couteur is asking you: do you have a better way of doing it? What would your solution be? What we want to hear from you is, if this one is not the way to go and it is not workable on greenfield sites where people have not already bought their blocks et cetera, what is the better way to go?

Ms Brookfield: I am a little newer to Canberra—I have been here for a couple of years—but Forde is a site where we believe appropriate controls have played out. That is probably a combination of a good developer, good builders and good controls all coming together and paying attention. I accidentally said before that the ACT is the only place that has a subdivision design code. I should have said that it is one of the few places that have a subdivision design code. Western Australia also has one. But that is really where it should start, and I do not think we have done that well. I still think we struggle with topography and we struggle with hills that need to be preserved and views that we want to see in and around our cities. That gets in the way a little bit of good solar orientation of lots. Also, just practical engineering design requirements get in the way a little bit.

I would say that somebody should take the time to go back to some of your newish estates and look at the subdivision code that was in place and that still applies and actually find out whether we did that right. That might be part of the problem—that we did not really stick to the subdivision controls we had, which are supposed to be half the battle.

After that, I will concede that there are some variable reasons as to why you do not put the right house on the right block, but we are getting better at that. Sometimes it is silly things—and this is not so much a Canberra thing but perhaps in other places—where they build the driveway on the wrong side of the lot and you have to stick with

the driveway. I can say that has been done in Coombs and Wright. They have put the driveway laybacks in already, so they are preconceiving where the driveway will go, which sometimes preconceives how the house is designed.

Mirror reversing is a sensible thing to do in some cases, but if the driveway is already on the right, you have got to mirror reverse the house but fit the garage into that design, which means you start to play around with the standard design, and that is when it all gets a bit clunky and it gets more expensive. So we are not doing some of the things in estate development that I suggest we probably should be doing to make the houses work.

THE CHAIR: So you are saying good codes and good regulations and a good developer and a good builder are ticking all the boxes. As we know, you do not actually need regulations to regulate people that are all doing the right thing; we have regulations because some people do not do the right thing. When you are talking about innovation, one of the things that has been brought to the committee during this hearing is some concern over the way people interpret and innovate and that other people in the street—and we have seen examples of buildings—are really, really unhappy about. The builder or developer has built this construction but other people in the street are really horrified by it—it is not in the character or it is not sympathetic, in their opinion.

When you say we do not need so many controls and 306 is over controlling, how do you think the community would respond to those controls not being there or being lessened in some way? My understanding is that the community are really concerned that they want to see a situation where they can be certain of the kind of developments that will go in their particular streets.

Mr Smith: Kristin just described particular areas having an overall design concept, so people when they go in there at the first stage have a totally clear understanding of what they can actually do. As to your point with regard to the extra levels of controls, what is occurring is that, because of the extra complexity of codes, you have uncertainty and indecision and misinterpretation by authorities, by regulators and by the community on exactly what those terms mean. You are ending up with a circumstance to say: "Look, this has been interpreted this way. This may be interpreted that way. This could be challenged in that way." That is just adding more confusion. We need to leave it to the market and the consumers as to what is innovative but also meets certain guidelines; otherwise legislation is directing innovation and directing controls that are outside, we believe, their right of control.

THE CHAIR: Mr Coe.

MR COE: Mr Fogg, do you wish to add anything?

Mr Fogg: Yes. I just want to follow on on that one. I do not disagree with what you guys said. The problem that we have got is some butt-ugly stuff out there. There are things that are in the suburbs on the north side of Canberra—let us not be too specific, but certainly in the newer suburbs on the north side—that, quite honestly, are just terrible. There are streets and streets of stuff that would drive you into a great case of depression. If we go even further to other areas—to, dare I say, Macgregor West or

West Macgregor, whatever it is, where we have got the left version of the right house and they are just cookie-cutter style homes—that has been driven for all the same reasons as all the other stuff. It has been driven for cost effectiveness, affordability, buildability and all those things, again trying to meet the requirements of energy ratings and so forth. The problem that we have got there is the outcomes have been bloody terrible. There is no disputing it.

How do we control it? This is not going to be the way to control it. Affordability has meant that we have got to build the cheapest possible home with the least inclusions, the least number of changes to the articulation of the house to minimise cost. And we have done that. We cannot get it any cheaper. The big driving force obviously is going to be land. So, as builders, we cannot build them any cheaper. The trouble is we are building them uglier because they become cheaper to build. We have taken off eaves because the eaves were expensive. We have gone parapet walls because they are cheaper.

We are ending up with something that, to me, is not what the outcome of Canberra is. I would like to see Canberra as developed, well-thought-about suburbs, dare I say, almost integrated, like the Yarralumlas. We cannot get Yarralumla everywhere. We have got cross-designs that are not necessarily always in keeping with the character of the suburb, but it is in keeping with the future development and the future character—terminologies that have been so emotive in the AAT or the ACAT.

How do we change it? This, as I said, is not the way. We need to allow for good design. This does not allow for good design. As you point out, it allows for designers to tick as many of the boxes and meet the requirements and for builders to build. So as a building designer, which is what my background is, my idea is to try to achieve affordability, buildability and functionality of a home within a price that can be done. We are not getting any of those.

Ms Brookfield: Can I also add, and it comes back to your question as well, we cannot expect the same level of solar access with homes on 300 square metres as we can on 900 square metres. So it is inappropriate for us to think that we can just keep coming down in size and design to give that. But also it is inappropriate to think that the homeowner expects, in that smaller home in that smaller space, to have equal solar access.

In New South Wales the housing code is actually stepped down based on the size of the lot. In other states there are different site setbacks which recognise the size of the lot and give you the best solar access they can give you, but it is not going to be what you get on 900 square metres. And this code is a bit of a one-size-fits-all in that sense.

MS LE COUTEUR: Clearly, there are issues this morning but again I thought where we had begun to solve that was the integrated design part, the smaller lots; you basically worked it out so that you were all good neighbours, you were doing it together. I thought we had taken that one on board.

Ms Brookfield: Yes, but the lots you are talking about that are already out there are not integrated. They are less than 500. They are a little bit over 300. They are falling into normal housing, single dwelling lots. The previous code would apply, and it was

not necessarily adapted for that slightly smaller lot. And that might be why we are seeing some poor outcomes.

MS LE COUTEUR: Possibly in the future, if 306 is passed, that particular issue will get through or will not happen again because of integrated design?

Ms Brookfield: On the smaller lots, you have got the chance. I cannot guarantee it, though, because each development is going to be unique. And it will depend on who is paying attention and what they apply. On the mid-size blocks, you might succeed in getting solar access, but I am not sure you will succeed in getting an actual, liveable house, with the little bit of land that is left over to build on. That is more the point we are trying to get across.

David has personal experience—and our members have experiences that this might be the point to recount—of people walking away from lots because they cannot build under this code. It is an anecdotal thing that we hear, but it is a real thing. And David has got the evidence of that.

Mr Fogg: Yes.

MR COE: Just going away from estates a little to RZ2, as I think Mr Smith said, this is probably the most contentious area of the planning system as far as punters in existing suburbs are concerned. What is the right balance? Certainly there were serious concerns about some developments, especially in cul-de-sacs or especially cul-de-sacs that back onto a major road or something like that. Yet you are saying that the new code is, in effect, stifling development in RZ2 at the moment. What is the right balance whereby character is preserved yet you are not stifling reasonable developments?

Mr Fogg: I do not disagree with the cul-de-sac issue, having built a couple in those areas. I must say that was pushing the boundaries, because the boundaries were allowed to be pushed.

MR COE: But there are good ones and bad ones.

Mr Fogg: There are but, at the end of the day, I do not think cul-de-sacs should be part of the equation. Personally, I think they should be taken out. I think we should be considering major arterial roads that are bus-linked so that people who are wanting to downsize do not need to have a car; they can just have their property, walk out the door and get onto a transit bus that will take them to major shopping centres. That is one way. The problem with that has been that everybody has felt that the 200 metres from the major-minor shops has been the be-all and end-all, and I think we should probably take that out of the equation and just put it to major arterial roads.

Certainly there should be a rethink of RZ3 and RZ4 into those smaller subdivisions. Chifley comes to mind, where we have got a bucket of land around the old school that can be subdivided off, I would think, for slightly taller buildings to integrate and maybe populate those smaller shopping centres to reinvigorate those.

Coming to RZ2, the biggest problem that the government has had is informing the

public of the implications of RZ2. Everybody saw it as a quick windfall on their block. The little ex-govie went from 300 to 600 overnight, until somebody built next to them. And then it became a problem. And the government really did need to inform people.

I had a situation where one half of Mawson on Ainsworth Street, facing west, the whole area of Mawson on that side, was RZ2. We were held up at ACAT for 12 months because a person bought into that area and did not understand the implications of what could happen to people in that suburb. His argument was just based on densification. We have done a very nice development in there. It is integrated very nicely, architecturally designed, good quality, but, at the end of the day, it was 12 months, $20,000 or $30,000 extra, to go through that whole process because he was not informed or did not have the full understanding of the implications of what RZ2 was about.

I think it is a public awareness issue, for one. You need to have public awareness. Stick to major arterial roads, even minor arterial roads that have bus-linking; do away with cul-de-sacs; possibly consider battleaxe blocks—they have been taken out of the equation because they do not have a frontage greater than 20 metres; and there are a few of those around—allow those developments where people can get a transit issue involved, I think, is a good way to do it and probably get a greater acceptance from the public.

MR COE: And in terms of the rules for dwellings per 300 square metres or 250 or whatever, is there any particular comment on that?

Mr Fogg: That has got to go. Surprisingly, the numbers of people who do unit developments are not just builders; they are mums and dads. I have a client who bought three blocks in Lyons, came to me a couple of months ago and said, "Could you please design me up? I reckon we could get 12 on it." Six. And if they had adaptable housing, eight. That was their superannuation out the door. At the end of the day, it has stifled those things because you are going to have a 700 square metre block and you can only fit two homes on it. Even if we could get it done where you could consolidate it, they are saying a maximum of four per block, with articulation or separation of four metres. They are the sorts of things where bulk and scale has, in effect, created a lot of problem for the neighbours.

I do not disagree. I think we need better design, better controls, but a mandatory 350 is not the way to do it. It is just unaffordable. There is no return to the builder. The banks would not lend you the money, for a start. And if the banks are not going to lend the money, it is just not going to happen. So affordability is the big one for the developer.

Mr Smith: The committee needs to take into consideration the current government's position on densification within the ACT.

Mr Fogg: True.

Mr Smith: We have just gone through a process—and HIA has been definitely involved in making a submission—in relation to that whole issue of densification around our town centres, for the purpose or the benefit of, one, affordability; two, the

drain on our infrastructure; also the effect on our ability to minimise transportation requirements, because people can walk to their town centres. They can utilise their facilities. And, of course, a lot of the town centres have existing employment opportunities. So they can do that. In my belief, in HIA's belief, that is a direction that the ACT government in planning is working towards by 2030.

So we need to maintain all of that in place, because there is already one direction moving that way. That assists affordability. We are minimising our requirements to expand infrastructure. We are minimising our requirements for transport. We cannot live with one without the other. So we need to be able to work together with the planning policy to make sure these things can occur.

MS LE COUTEUR: From talking to people, clearly what a lot of people would like to see in terms of redevelopment is townhouses and duplexes, row houses, that style of development. Can you think of what rules would actually encourage such developments? What people are objecting to is what they perceive as large numbers of one-bedroom units. That has been the thing that people have got most upset about.

Mr Fogg: That is driven by the market, to be honest. It is. It is not a planning thing.

Ms Brookfield: It is not the code.

Mr Fogg: It is not the code. It is going to be driven by the market. I know there are those on the north side that have argued that we should be trying to get families back to the inner suburbs. That is fabulous, but the families are not the ones who are going to be moving into RZ2s. The families are going to be moving into the larger blocks, because they want to be able to have, I would like to think, a family home that can be extended, that can grow with their family. They will have a backyard that the kids can play in; whereas RZ2 is really going to be the downsizers, the renters or people who are the DINKs—double income, no kids. So that is what, I suppose, RZ2 is aimed at.

We do need rental accommodation. We are not getting it. We do need to have affordable rental accommodation, and, again, we are not getting that. We have a glut of units at the moment. Unit sales are dead in the water. So RZ2 realistically is not going to be impacted, because I do not think too many people are going to start.

But having said that, we still need to have two-bedroom and one-bedroom units for sale. The problem that we have got here is that there is a mandatory minimum of three bedrooms on a block. So we are forcing builders to put a three-bedroom home on it. If you speak to any of the small, large and medium builders out there, they struggle to sell three-bedroom units, because they are not required. It is really for two bedrooms. Two bedrooms and a study, possibly, is what it comes down to. That is market driven.

It is idealistic to think that we can go down the path and have that, but I would like to think that if you want to move into—I am sticking with Chifley and Lyons because I am in Phillip, so it is nice and simple—those suburbs, you can buy a home there for $550,000 on a big block, a little ex-govie, it needs a lot of work and it can be developed. And that is the beauty about buying in the established areas, because you can, as a family, grow with that home.

You buy into the new homes in the new suburbs of 300, 400 square metres, you will maximise your plot ratio to the nth because you have spent $1,000 a square metre. You will be putting on a $300,000, $400,000, $500,000 house and it will still only really get you 50 per cent of that; so it is 150 to 200 square metres of house, of which 36 square metres is a garage. That home will never, ever be able to be extended because of the plot ratio requirements. So that home will never grow with the family. Those people who are living out in Macgregor and have got their little 120-square metre bungalow will never bother to extend those either. So I think we have got a socioeconomic problem developing, which is a totally different issue, I appreciate, but having the small blocks and these restrictions is creating more than problems now; they are going to be long-term problems.

MS LE COUTEUR: Ms Brookfield, you talked about estate development and you particularly talked about the crossovers that are put in. One practical suggestion would be that they not be put in until after the DA is put in.

Ms Brookfield: It could, yes. It is certainly done in a lot of locations. You do not need to design where the driveway is. Getting down do the technical side of it, if you use a rolled kerb, then there is no issue.

MS LE COUTEUR: There is no issue. You can do them anywhere.

Ms Brookfield: That goes, and you have a requirement that the layback is constructed. It should join the footpath and then you build the rest. And you do that at the time you are constructing the rest of the house and the driveway. The builder has a responsibility to do it rather than the developer. So it is shifted in part. But if you did have a squared kerb that actually needed to be cut, again that is a pretty common thing that occurs across the rest of the country. And the development application for the house has the driveway and you get approval from TAMS, in this instance, to open the crossing and do the work at the time you build the house.

MS LE COUTEUR: Would that have an impact in terms of TAMS planting street trees and putting services in, if they do not know until after the house is built where the crossing is going to be, where the driveway is going to be? I am wondering whether it is—

Ms Brookfield: It does flow down to that. Yes, you need to strategically locate the trees, strategically locate the boundaries of blocks. It is a pretty fair bet to say the garage is on a side. There are not too many that go in the middle. You have got a few metres to play with if you put it in the centre.

Mr Fogg: But surely—this is back to the estate planners—they would be looking at the orientation of the block and saying: "We're not going to put it to the north. We'll put it to the south."

MS LE COUTEUR: One would hope that the garage would be on the south, not the north. I have seen plenty of north-facing garages, that having been said.

Mr Fogg: Yes.

Ms Brookfield: Yes, it can be practically worked with. It just may need a little bit of change in current process, and I do not know the ACT process well enough to articulate what that might be for you.

Mr Smith: And once again, just to extend on that, locating a driveway is putting a total design constraint on the block of land, which should be left to the designer.

MR COE: I have a question about the territory plan as a whole and, to an extent, on this variation. A number of people think that it is fairly inaccessible as a document, and I think it is for the planning committee as well. I note in your submission and in your earlier remarks that you mentioned a development application guide would be of assistance. Would you please give some additional information about what such a guide would include and any remarks you have about the accessibility of the variation and also the territory plan as a whole?

Mr Smith: For a start, as you can see, it is an incredibly complex document that goes from here to there to everywhere. Even our most experienced architects and designers are having problems deciphering it. The people administering it are having problems deciphering it.

MR COE: ACAT, too, I would imagine.

Mr Smith: Obviously, any document that has been created to be so complex needs a consistent design guide that is totally understood by everybody of how you move around it. I would go back to previous comments that we have made before to say that, "Well, okay, we realise it's so incredibly complex, so we now need to really develop another design guide," so we are rewriting again. We believe in true honesty that the whole thing needs to be rethought before even going to the position of thinking about a design guide.

As we mentioned before and as I mentioned in my opening, we go back to 301 and 303 and say: "Well, they weren't broken. Why change them?" It is probably a position where we go back and have a look at those documents and, if anything, look at simplistically refining those before we go down to another stage of design.

Mr Fogg: Previous to 301 and 303 was the previous DV whatever it was—I have forgotten the number now. Was that repealed before 301 and 303 were implemented?

MS LE COUTEUR: I am not sure what you—

Mr Fogg: No, the reason—I suppose we have repealed 301 and 303—

MS LE COUTEUR: They were never put forward.

MR COE: They were never put forward.

MS LE COUTEUR: They were only drafts.

Mr Fogg: Okay, they were only drafts, but we have repealed the previous and we are still in draft format.

MS LE COUTEUR: No, I understand that we have not repealed anything.

Mr Fogg: Okay.

MS LE COUTEUR: It is possible that, as a result of this process, we will put some new stuff in and when these have got codes in them, it will replace the codes, but nothing has been repealed.

Mr Fogg: So we are still in interim, though. That is the problem.

MS LE COUTEUR: Only for—

Mr Smith: It is my belief that 301 and 303 have been repealed.

MS LE COUTEUR: They have not been repealed; they were never started. They were drafts and they—

Mr Fogg: They are still drafts.

MS LE COUTEUR: And they never went any further.

Ms Brookfield: They have still got the standing territory plan from 2008.

Mr Fogg: Okay.

MS LE COUTEUR: Yes, yes.

Mr Fogg: So the problem is that we have implemented 306.

MS LE COUTEUR: We have not implemented—

Mr Fogg: Well, in part.

MS LE COUTEUR: A small part of it.

MR COE: It has interim effect.

Mr Fogg: Well, that is what I am saying.

MS LE COUTEUR: Only a very small—

Mr Fogg: It is there.

MS LE COUTEUR: But if you look at this as being the size of it, the part that has interim effect is a page or two. It is a small amount in RZ2.

Mr Fogg: But the impact is huge, though, is it not? The impact of 306 now has created a furore within the industry bigger than any planning changes we have had.

THE CHAIR: Mr Fogg, are you talking about the concern about the total document or the interim effect?

Mr Fogg: The interim effect of it, yes.

THE CHAIR: Which is a very small amount.

MS LE COUTEUR: But the interim effect is really—someone correct me if I am wrong—just on the RZ2 high density parts.

Mr Fogg: It is; that is correct. But the impact for the industry is major. That is what I am saying. That RZ2 has taken a complete sector out of the industry. It does not exist anymore; it has gone. We are going to have a downturn in the industry as we know it. I think the LDA sales figures are showing quite a considerable drop from the 55 to 37 to 29 over the next three years. So are the staff figures the HIA produced yesterday.

We are seeing a downturn in the market. That is a correction I suppose we needed to have because the last 15 or so years have been pretty much skyward. But we have not lost a market in that whole time except for RZ2, and that market was fairly large. It might be one page, but the impact to the industry is huge.

If I am dwelling on it more than necessary it is because it has affected that part of the industry, which is small to medium builders. It has not affected the big end of town. RZ3s and 4s are still ticking along, and RZ1 is still going. That has just reminded me that the issue with RZ1 that we have not attacked—and I am conscious of the time—is secondary housing. Perhaps I can just throw that into the mix, possibly after we come back from tea.

THE CHAIR: Thank you, Mr Fogg.

Mr Fogg: Nice segue.

THE CHAIR: A very good segue. We will break for five minutes. Thank you.

Short adjournment.

THE CHAIR: Mr Fogg, you were about to raise another issue, so we will go to that.

Mr Fogg: The other issue I wanted to touch on was the secondary home. Currently in an RZ1 I can build two homes. I cannot sell them individually. I can sell them as one as long as I can build up to 50 per cent of that in total. So if I have got a 900-square metre block, I can build 450 square metres of home.

MS LE COUTEUR: Is that right? I thought with the dual occupancies the plot ratio was 35 per cent.

Mr Fogg: No, not dual occupancy. This is if I want to build a secondary home, and this comes back to this 90 square metres and so forth. Even if it is 35 per cent on 1,000 square metres, it is 350 square metres. Consequently, if I had a 520-square metre house in front, I can build a fairly sizable home in the back but still meet the

requirements more than the 90 square metres.

My argument there is: why do we have a specific thing called "secondary residence" when it is already there and we are putting a limitation of 75 square metres and we are asking for 90? This is in some way trying to find another avenue for RZ2, if that one fails, as it will. Dual occupancies are dead in the water. They just do not stack up. You cannot buy them, build them, redevelop them and pay the tax and get a return on investment. So they are dead.

We need to find another way for homeowners to capitalise on their blocks. It is well known in the established areas that they are large blocks. Most of them have relatively small homes on them. The potential to put a secondary residence in the back means that you do not have the issue of car parking that you would with a dual occie. You do not have the issue of common areas, which has been the problem with dual occupancies. But you then have the opportunity for mum and dad to move into the new home at the back possibly and the kids to the front, and you have that opportunity to develop that block in such a way.

I am suggesting that 90 square metres was never going to be enough. I do not believe it is something we should even be considering as such, because it is already there. Why are we calling it specifically a secondary residence? So it falls outside of the dual occupancy issue. I think that is why we have got "secondary residence". I just think it is too restrictive at 90 square metres.

MS LE COUTEUR: I am afraid, Mr Fogg, I am confused.

Mr Fogg: Possibly.

Ms Brookfield: We can clarify—I think.

Mr Fogg: Ask away.

MS LE COUTEUR: Basically I think what you are saying is that secondary residences should be allowed to be bigger.

Mr Fogg: That is correct.

MS LE COUTEUR: And as they get bigger they basically become a dual occupancy. But you have just said that dual occupancies are dead in the water and you will not do them.

Mr Fogg: Yes, but that is a sale one.

MS LE COUTEUR: Pardon?

Mr Fogg: Dual occupancy you can sell; secondary residence you cannot.

MS LE COUTEUR: In RZ1 you cannot do a subdivision.

Mr Fogg: That is true. But you can build a second home—

MS LE COUTEUR: My understanding—correct me if I am wrong—is that in RZ1 you cannot do a subdivision.

Mr Fogg: No.

MS LE COUTEUR: So you cannot sell it separately.

Mr Fogg: No, and I am not saying. What I am saying is you are building two homes on the one block.

MS LE COUTEUR: Yes.

Mr Fogg: But you can only ever sell that home as two homes on the block.

MS LE COUTEUR: I think we all appreciate that. What I am not quite understanding is that you have just said dual occupancies are dead.

Mr Fogg: Yes, but that is RZ2 dual occies as against RZ1 dual occies. RZ2 dual occies will then have—

MS LE COUTEUR: Okay, sorry—

Mr Fogg: I am saying this is all RZ1—

MS LE COUTEUR: Sorry, I did not appreciate you were saying RZ2 dual occies are dead. I think they have been dead for quite a while.

Mr Fogg: That is right.

MS LE COUTEUR: Because people tend to go to a higher level of development from the dual occupancy in RZ2. I thought that was what—

Mr Fogg: No, RZ2 was killed off, so they told us, because of the lack of body corporate administration. You can still do a dual occupancy, but you have to do a complete development of it. So you develop that site so you have independent driveways, so it is almost like a battle axe. You then take the RZ2 development site and you will have two driveways coming in so you do not utilise one driveway to get to two properties. That is dead in the water.

MR COE: And the lease variation as well.

Mr Fogg: And the lease variation. Because if you live in Macgregor it is $50,000 per unit and if you live in Forrest it is $120,000. It just does not stack up. What I am suggesting is that obviously the bulk of Canberra is RZ1—lots of homes, big blocks and relatively small homes. There is potential for that backyard to be developed into another home for that owner. You can stamp those not for dual occupancy or whatever, but that allows the owner of that property to build a house at the back and live in the house at the back. I have done just done that with one in Braddon. They can live in the house in the back and they can rent the house in the front, either to

somebody else or their children. In this case in Braddon the children live in the front and they live in the back of the house—73 Limestone Avenue, if you want to have a look at it.

But I am saying that they could do that on that block because they had a good block size. They have got themselves a lovely little two-bedroom home with all the bits and pieces in it, but it is bigger than 90 square metres. We cannot live in 90 square metres—it is a flat, or a fairly large flat.

Ms Brookfield: And we cannot live in 75.

Mr Fogg: And the control is 75. I am saying that we have that potential. It is already written down. The problem is that, if we come under the dual occupancy regime—which is where you are coming from, Caroline—it would then mean that you have to have double car accommodation and all the plot ratios have to be there as far as private open space is concerned. But if it is a secondary residence—that is why we have got it here—it does not require those things to be there. That is the difference. I am suggesting that it is already there and I can build it without a secondary residence, as long as I have the double car accommodation and all the bits and pieces. Now I put a limitation calling it a second residence, and we can only build 75 square metres. It is a bit odd.

MS LE COUTEUR: So you are suggesting that basically the secondary residence continues but it is controlled by the plot ratio?

Mr Fogg: Yes, perfectly, exacta mondo.

MR COE: Was there not an issue in the past about building a second kitchen?

Mr Fogg: Yes. That was some time ago.

MS LE COUTEUR: That was a bit in the past.

Ms Brookfield: The normal planning concept is that two kitchens equals two houses

MR COE: That was some time ago.

MS LE COUTEUR: Only two years ago.

THE CHAIR: Sorry, can you not talk over one another, because it makes it really difficult for Hansard. Ms Brookfield.

Ms Brookfield: The normal concept in the planning world is that two kitchens equals two houses. So if you had additional bedrooms and an area but not a kitchen, it would not end up being defined as a dual occupancy and, therefore, captured by the other codes. But I think David's main point is the 75-metre floor limit on having two houses on a block of land is something we think is too restrictive, and there is an opportunity for you here to achieve some of these density requirements that you are looking for, for a whole lot of other good reasons, by facilitating two—I could go to three or four townhouses or villas that we mentioned before—houses on these sites. Whether they

are RZ1s and RZ2s, I do not get into as much.

Mr Fogg: They will only be RZ1s. RZ1 is what I am suggesting.

Ms Brookfield: The concept of two houses which do not have a subdivision right will keep you in the right bucket in terms of having streets and streets of dual occupancies, which we did in the 1980s, and they looked awful. That was because there was a bucket to be made in it and we did it poorly. So long as there is not that subdivision right, I think it is probably pretty safe to facilitate a second house on a block that is large enough and that still meets all the plot ratios and all the requirements. What that is going to do is service your rental accommodation needs. So it will not be another sellable house but it will be another house. And any house in any form that we can get constructed helps us meet our housing demand.

MR COE: What could be done if a government wanted to resurrect dual occupancy houses?

Mr Fogg: My understanding of the dual occupancy as it is now is that, because of the way it is structured, you have to have this body corporate. The body corporate is fine—this is the story we are told—for those who originally bought, but it is the second and third people who tend not to have the meetings. Consequently insurances become an issue and the common area is not insured. It was supposedly a legal landmine. I do not think that is necessarily the case and we can overcome that pretty easily by strata-titling it—not strata title—

Ms Brookfield: Torrens.

Mr Fogg: Torrens title. We cannot do Torrens here anyhow. But there is some way we can get around it without having a body corporate for two homes. There are other mechanisms, and if we could find one that was going to be acceptable to the powers that be, then that should be the path we are going down. Dual occupancies on corner blocks should be almost mandatory. They are just such big blocks. They are being wasted. You do not have issues of traffic, because you will have a driveway from either side. So I think those are the things that we should be possibly looking at.

Yes, we are going to put those particular blocks close to shops; so be it. But there are certain blocks around that are just singing out for it, and no-one is going to go down that path because it is inefficient. It is not cost effective.

Ms Brookfield: It seems to me that the key inhibitors of dual occupancies are the current titling arrangements in the territory, which are different to other states. This common property thing just does not exist elsewhere. It is not an impediment. The lease variation charges are then the biggest kick. I do not think anyone is contending that the codes and design controls are an impediment. It is a whole lot of other things that are knocking that out.

MS LE COUTEUR: You said earlier that you were happy with 301 and 303; you are just not happy with 306. My understanding is that 306 is basically just an amalgamation of the two.

Mr Fogg: Except for that one page.

MS LE COUTEUR: So basically you are happy with everything except for the RZ2 page really?

Mr Fogg: RZ2, solar access.

MS LE COUTEUR: Solar access was in the original 301.

Mr Fogg: No, we were not happy with that in the original. We said that in our original application. It did have its issues that we addressed earlier, and we were not necessarily going to say carte blanche to implement it but, at the end of the day, the biggest thing, I think, is that we need to throw it out and start again with a different mindset, to some degree, and start looking at the implications of what this is going to do. The rights of the owner of that particular block have not been considered at all, as I think everybody has said from previous meetings with us and today.

As Stephen said, the only person who is going to get the windfall is the person at the end of the block when they do not have that problem. They can put their house wherever they like, because they are not going to impede anybody. Everyone else down the chain is going to try to look after the neighbour, without having any rights for themselves.

I think it should be fundamental that a homeowner has a right to put on their block a home within the design requirements so that they can maximise their house on their block with their amenities, without trying to impede or trying to fit a fence line that is perceived for, what, two, three, four days of the year around 21 June, where there is going to be some shadowing. At that particular time, I am thinking most people come inside because it is too bloody cold.

Mr Smith: And to emphasise again and to go back, one of the biggest concerns that we are finding coming from consumers is that they have pre-purchased blocks in a belief that they can build X, Y, Z on those blocks. And the point that Kristin made before with regard to the necessity to control at the subdivision design stage how orientation of these blocks is going so that people can totally comfortably assume that they can build something to their scale is where the variation, we believe, has been falling down.

I go back to a comment in a submission that we made on DV 303, and that is that the HIA once again emphasised the importance that solar orientation of land will play in meeting the solar access requirement for housing development. So it goes back to that point. We have the circumstance happening now where people under the new variation are having to say: "Oh, hang on a minute. I pre-purchased this block, but I can't build what I want." We have people that are purchasing blocks at $400,000 being restricted to being able to build a 150 to 180 square metre house. The sums do not add up. We have had reports that in some areas there is in the vicinity of 30 per cent of blocks being handed back because it is not viable for them to build on those blocks.

Mr Fogg: Or if they do, they are having to excavate them so that they do not impede

on that fence. And that is just not cost effective.

MR COE: Anecdotally, what suburbs are we talking about here?

Mr Fogg: Not so much Wright; they are more in the northside suburbs.

MS LE COUTEUR: Gungahlin suburbs.

Mr Fogg: Gungahlin. I do not think the 30 per cent relates to Wright. There have certainly been quite a few that have gone through the churn and come back, and I think they are a mixture between land rent and sales. But at the same time, there are builders out there that are struggling to get designs on blocks that are going to give them a return on investment, without having to excavate them, split-level them. Split-level homes in that area, I do not think, are what we are trying to get. It just takes a marketplace out that will be a little older, and having a split-level home is not what they want. They want something level they can all walk into. I do not think that is really what we should be having in that area.

MS LE COUTEUR: Is the reason that the returns are in Gungahlin rather than in Molonglo that in Gungahlin the block layout did not pay as much attention to solar and so that while, clearly, there is a short-term issue in Gungahlin, going forward we have the new estate development and the new layout and the new building requirements, and the two could go together and actually work? Is that what we are seeing as the reason why we are not having that same problem in Molonglo?

Mr Fogg: I think in Molonglo we are going to end up having the left version of the right, like we have got in Macgregor. Because we are going to have a requirement that all the homes have to be two metres from the side of the block and because we have got issues of overshadowing—and with the garage on the south side—as we go down the street, we are going to create what we have created in Gungahlin. We are going to create some fairly poor design to meet the requirements.

I think that was what Glen Dowse and Alistair McCallum were saying. I am sure that the architects will be saying similar things. You can get the outcomes that are wanted under DV 306. As it stands now, you can get them, but what you are going to end up with is a fairly ugly result. It is just going to meet the requirements. It is going to do all those bits and pieces, but, guys, it is not going to give us the diversity and the integration that we are looking for in our suburbs. And we are not getting it.

Ms Brookfield: To build on the point David made earlier and to go to your question of what else could we do and not going back to the current controls, it is probably a pretty good point to make that in a climate like Canberra there are not very many of us outside on 21 June in our backyard. And probably most of us have the curtains closed inside our houses if we are inside our houses so that we are not losing the warmth through our windows.

Mr Fogg: Double glazing will fix that.

Ms Brookfield: Perhaps we need to put a little thought into changing the date. Perhaps a more pragmatic approach in this climate would be the spring and the

autumn benchmarks and looking at what angles we can get and use March and September, which more represent nine months of the year in this climate when we are wanting to be outside.

MS LE COUTEUR: Six months of the year.

Ms Brookfield: Include summer. Anything in summer is better. You get nine months worth of coverage by using those benchmarks, rather than 12 months worth of coverage using the winter benchmark.

MS LE COUTEUR: Have you looked at—

Ms Brookfield: I have not. It is, honestly, floating it as a first idea based on, I think, the quite accurate point about how we use our houses in Canberra. Perhaps our planning controls here are trying to achieve something that we do not actually use in their current form. It is not just the variation.

MS LE COUTEUR: That having been said, those people who are fortunate enough to have north-facing windows on their house certainly want to have sun in the winter. It is really not acceptable to only have sun in the summer.

Mr Fogg: You can still get sun in the winter. It is just that the way that I think it is written is that you have got to get sun at floor level. If you go up 900 millimetres on a windowsill, you can still get sun all the way through. You just will not get the sun through your sliding door for a couple of days a year. And we are designing everything around a couple of days a year over that very bad time. Let us just say, even if it is for a whole month of that year, what we are designing—all that this bad design is going to achieve is one month's worth of sun into a room—I think, is madness at best.

On solar, without going into my background, we actually won the HIA environmental builder of the year award for a development we did in Chifley. And that particular person had 2½ thousand square metres of dirt and 40 years ago designed their block to suit solar orientation. He spent $500,000 to make sure that his next extension he put on was going to meet all those things, and he runs his house currently on the cost of three light bulbs. That is all very admirable, but $500,000 to get a master bedroom, en suite and a study, solar voltaic and hot-water hydronic heating is a bucket load of money to spend. There is provision for a lift because he reckons next time he is moving he is in a pine box. So what you have got there is a situation that he is ageing in place and he has designed for it. He is lucky that he has got the money to do it. Not everybody has that sort of funding. There was no real point.

This is just a bit of anecdotal information. We are chasing and we do want to try to get the best outcomes for design and orientation but with restrictions like we are going to have, we are going to struggle in the established areas to meet those requirements. Certainly they are struggling in the new places to meet them effectively.

MS LE COUTEUR: We know in Canberra our major energy use in households is for winter heating. Surely, if we are concerned about solar access, the middle of winter in the houses is what we want and to suggest that we forget that seems—

Ms Brookfield: No.

Mr Fogg: No.

MS LE COUTEUR: That is really not—

Ms Brookfield: It was not a suggestion to forget it but also bear in mind that the six-star provisions are completely focused on that heating and cooling.

MS LE COUTEUR: Yes, but they do not require—the problem with six star is that it does not require solar orientation and the one thing you cannot do with a house afterwards is pick it up and move it. Insulation and double glazing all can be retrofitted. It is more expensive but it can be done. Orientation from that point of view is the thing that a planning system has to push, because you cannot fix it up.

Ms Brookfield: I agree, and our GreenSmart program actually combines the star rating with orientation as a compulsory must because of that point. We do recognise that.

Mr Fogg: Has anybody done a study on the number of sunny days we get in Canberra over winter?

MS LE COUTEUR: Lots.

Mr Fogg: I have been here for 59 years and we do get lots, but it is not necessarily on 21 June and it might not be for that full week. At the end of the day, there are going to be days that we do not get sun. I do hear you; it is lovely to have sun. Mine faces north and I get the sun as well. But it does not mean that we have to compromise on design for a very, very short period of time and be emotive about needing to have the sun all winter. We get the sun for most of the winter. It might be for a week that you will not get it. We are designing the whole house for one week or a month based on getting sun into that area. I think that is just madness, to be honest.

Ms Brookfield: I am only putting it forward as something to investigate—what is the difference? How many millimetres extra sun do we get by working to the June standard rather than a March standard?

Mr Fogg: I think it is half a metre—I think somebody did the figure—up from the ground, and we can go back the way we were. It is not big.

Mr Smith: No, it is not.

Mr Fogg: Ask that of the architects institute. They will give you the exact figure.

MS LE COUTEUR: So half a metre, given that we now tend to do concrete slabs, it is an awful lot of concrete if you are starting half a metre up.

Mr Fogg: Generally it is only one window. What we are getting now to meet the energy ratings. Our windows are getting smaller, because we cannot get thermal

broken windows at the right price. We are going to have to have smaller windows, better insulation. They will not meet the requirements. So you are going to have a door and windows, and the windows will not be going to the ground.

They are changing requirements. These are building code issues. They are not planning issues. It means that we can plan all we like, but we as builders cannot build it because we cannot get the energy rating up either through the ACBC window calculator or the current energy rating that we use. There are other impacts. It is nice to think that we have got the big slab floor and we are going to have thermal mass. I totally agree. But you are going to have a window or a sliding door and the rest is windows; so you need wall space for furniture.

MS LE COUTEUR: Even on the north face?

Mr Fogg: Even on the north face, yes. Currently with the ACBC glazing calculator, in the ACT you cannot get an energy rating unless you have north-faced windows. So if you have got a house that has fabulous views facing west and you say, "I would like to have those views," you cannot put that window anywhere there. The only way you can make the ACBC glazing calculator work is to have a north-faced window. That is it. It will not allow you to do anything else.

Currently we are lucky in the ACT in that under the regulations, if we are building an extension below 50 square metres, we can utilise the old glazing calculator, which allows that. But they are building issues, not design issues. You are saying that on a design basis you are going to have the lovely sun. You will, but it will only be for a short period of time through a fairly standard-size door. I am sorry to say that.

MS LE COUTEUR: I might take some of these points up with the architects and see what they have to say.

Mr Fogg: Please do.

MS LE COUTEUR: Excellent idea.

MR COE: Earlier you said that a fixed height would be better than a storey limit. What kind of vagaries exist at the moment? I know that basements in particular are poorly defined. What sort of impact would that have?

Mr Fogg: I think it was brought up by the MBA in their submission that basements should not be part of the GFA. I totally agree with that one. It does not impact on the bulk and scale of the house. It gives an opportunity to utilise the block to its maximum. If somebody has got the money to put a basement in, I think that should be allowed.

The other one that is slightly contentious is attics within the 40 degree pitch roof. There should be allowance for that to be the case. There are countless, countless examples out there of homes, because of the way they have been able to be set back, look like they have got a three-storey facade. They have been able to get past purely because of setback. I do not see why we just cannot. It is in many regards, I think, limiting the potential of what can happen on that block.

Certainly if you had a 400-square metre block of dirt and you wanted to build a family home and you are going to lose 40-odd square metres of a garage, it would be nice to have that under the house and not be included and still get the full utilisation of that block. That is probably in part what we are going to have to start looking at with smaller block sizes.

MR COE: How are lofts currently treated? If it is under one ceiling, is it as simple as that?

Mr Smith: Predominantly at this point in time there is talk of a definition of "storeys". Our total belief is that if there is a building envelope, a house, no matter how many storeys—as long as it meets the Building Code of Australia height requirements—should be built in that envelope. That should be achieved. They should not be determined on the basis of how many storeys there are. They should be determined on whether they fit in with the building envelope and meet the criteria of the Building Code of Australia.

Mr Fogg: It is fairly silly—again, we have got a job that we did in Cook. It was approved. We built it. It was all done and we had already discussed it with the neighbour. The neighbour felt that there was some degree of overshadowing. We produced the figures to show them that that was not the case. ACTPLA has come out and said, "No, we have got a three-storey structure." No, we have not. We have got a three-storey structure because 2½ or three square metres of the upstairs was sitting over the top of the lounge room, which was sitting over the top of the garage.

Okay, so we have got a three-storey structure. The way to overcome that was to make that part of the garage storeroom. Did it change anything? Not a thing. It just meant the garage was not useable. We now have to build them another garage. It changed into a storeroom, but all that did was rubberstamp something, because that particular part of the legislation was being implemented. That is fine, but the plan had been approved as a two-storey structure, which it was. But because of the way it is written and because that three square metres, or whatever it was, fell outside, the option was to pull it down—bizarre—or make it into a storeroom, which was acceptable. So until we can change that, those are the problems that are associated at the coalface.

Ms Brookfield: Yes, the nub of this one is there are different interpretations of what a storey is. In some cases, a loft may be in one planner's view a storey because it is a habitable room and it is a level, whether it is a third, fourth or fifth level, and in other people's view, it may be considered just use of existing space within the existing roof line. Most planning codes would be okay with use of the roof space if it does not change the roof line. They tend to be pretty flexible there, and there is an attic provision. It is even on the page in front of me. It just comes down to the definition of "storey" and the fact that that can swing in a whole lot of different ways. So a height limit is a much cleaner way. No interpretation is needed. You are or are not over it. If you are, you go into merit track; off you go and you get assessed. That is really I think the nub of it.

MS LE COUTEUR: If you run down that route, how do you go in terms of plot ratios? Do you give them up as well? Do you still keep the same plot ratios?

Ms Brookfield: If there is concern, you can write your provision to specify which types of rooms are included in a plot ratio; so the storeroom-garage concept. You can create a definition, and I suspect there already is one, that will say that all habitable rooms and the garage are included or only habitable rooms but not the garage, not this, not that are included for the purposes of measuring plot ratio. You just need to specify it. Again, you need to specify it to avoid interpretation.

Mr Fogg: Yes.

MR COE: What is a genuine example of someone building a storeroom in a house? What are the intentions when they are drafted? Is it to give flexibility in situations like this—a backdoor bit of flexibility to architects—or is it some idea that people actually want storerooms?

Mr Smith: No, these are definitions that are written in the building code.

MR COE: Right.

Mr Fogg: Non-habitable space.

Mr Smith: Non-habitable space and they are defined. So it is under the Building Code of Australia.

Mr Fogg: You would have a double garage under and when you open your sub-floor access door you can see underneath the bearers and the joists of the home or the slab and you can gain access. That is deemed to be a storeroom, non-habitable space. So what they are saying is that it is an interpretation so they can avoid the process. On this job it was made into a storeroom and consequently overcame the issue of having to pull the whole thing down. But the problem is that it still created a problem.

There is no such thing as a storeroom other than for people who want to say, "I want to have a mud room, for argument's sake, where I can store all my wet gear." We have done designs where we have got those, where people have designed it in. But as a specific area at the back of a garage, it tended to be a rumpus room that was never used.

Mr Smith: It has also been interpreted separately in situations we call the granny flat. Kristin mentioned before the second kitchen. If you actually label that as a bar, you can get it through and it can be a kitchen.

Mr Fogg: Craft room.

Mr Smith: Yes, you can make it a bar area and put a microwave in.

Mr Fogg: Craft room. You need water for a craft room.

Mr Smith: So there are all those interpretations. That is basically what I am suggesting.

Ms Brookfield: Yes.

MR COE: A mini-kiln cum oven.

Ms Brookfield: I think what that comes back to is one of the points I made earlier: we write codes for the majority, not for the minority of instances. All these little twists and turns are not core issues for us. The core issue for us is getting a working code for 80 per cent of houses that need only one approval. Whatever that looks like is something we want to work on.

MS LE COUTEUR: You talked about there being two ways to control: you can either do a building envelope or you can do the footprint and setbacks et cetera.

Ms Brookfield: Yes.

MS LE COUTEUR: Do I take it you are a fan of the first—the building footprint et cetera rather than the building envelope?

Ms Brookfield: Yes, it is certainly easier from both interpretation and application to design to a square rigid space that you get within setback height. The concept that the envelope gives you is the angle, and that is fine. That is why I say you do one or the other. The problem with this code is that it has got two building envelopes with two different angles competing against each other. I would contend that even if you went to the solar one, you only need one. We should not need to have two different envelopes in play, because if you are achieving the solar access, you are probably automatically achieving the privacy issues and the other things that you are trying to control. That is where I was quite intrigued to see a need for two different envelopes with two different angles. I think if you—

Mr Smith: You are not agreeing to the solar, though?

Ms Brookfield: No, I think the 30-degree angle is too severe, and the 1.8-two metre height is too severe. So I am not saying that should be the way. But realistically, at the end of the day, that is the one that prevails, so just have one.

MR COE: What sort of work must be involved at the ACTPLA end to assess these? Just as it is complex for an architect who has been working on a certain job for weeks, surely when ACTPLA see it for the first time, with no background whatsoever, it has to be challenging and costly for them to—

Mr Fogg: Part of our submission is going to include shadow diagrams, envelope, all the details that they can then look at and go: "Okay, well, that's all very well and good. Let's get on to Google Maps and let's see what others are there." If it becomes too contentious, they will then go out and do a site visit. Initially they will get the full application with shadow diagrams, if applicable. If you are outside of the envelope, you then have to put an argument towards that. They get a full written statement on it, so they will take it at face value and then they will take it from there.

Ms Brookfield: Yes, as an ex-council planner, I never drew a shadow diagram. They were given to me and you checked them to make sure they were not bogus.

MR COE: But you would sort of be checking ball park—

Ms Brookfield: There are templates. There are little templates that you can put on them. I do not know if they exist for this new model. But I think you have seen a whole lot of examples with the previous submissions. So that is how that work is done, and the burden lies with the applicant. ACTPLA would then just be responsible for checking that.

MR COE: Do you know what sort of cost that is likely to put on a set of drawings?

Mr Fogg: Huge. Because it is backwards and forwards, you can go nearly $1,000 straight on that alone just in time and effort. The one we did in Cook was close to $1,500 by the time we finished it. We had to wear it. It is just part and parcel of passing that information across. That one became a contentious issue. If it is done right to start with—which we thought we did—that is part of the overall cost and that is going to be in your design fees. But time and effort to administer it, we have not actually qualified that.

MS LE COUTEUR: With e-development, does ACTPLA get an electronic description of the building so that if they wished to they could put that into their own package and reproduce the shadow diagrams?

Mr Fogg: No, they do not get it in CAD, they get it in PDF.

Ms Brookfield: They get flat plans.

MS LE COUTEUR: So they do not get a CAD plan?

Ms Brookfield: No.

MS LE COUTEUR: If they are wondering whether these shadow diagrams actually refer to the building, that would be the easiest thing—

Mr Fogg: A little contentious to send a CAD plan.

Mr Smith: That is copyright.

Mr Fogg: That is copyright and you would not release it.

MS LE COUTEUR: No; I appreciate it is copyright.

Ms Brookfield: Yes.

Mr Fogg: No, but that—

MS LE COUTEUR: But you are getting the—

Mr Fogg: That is their—

MS LE COUTEUR: Their intellectual—

THE CHAIR: One person talking at a time, Ms Le Couteur. Mr Fogg, would you just answer the question?

MS LE COUTEUR: Sorry.

THE CHAIR: You just hang fire until he answers the question.

Mr Fogg: No, we would not release a CAD file, because that is our intellectual property, which we would not release. Certainly somebody could manipulate it outside of that, so it would not be released. It is fine to have PDFs.

Ms Brookfield: I would also suggest, again, if it gets that complex and you feel such concern that you want to put it into the system and do it all again yourself as the assessing authority, your codes are falling down on you and they are not delivering a simple system.

MS LE COUTEUR: Most people who go to ACAT say that ACTPLA has not managed to interpret the rules correctly, and some of them win. Presumably they convince ACAT that they are correct and that ACTPLA has not been able to interpret the rules correctly. We clearly already have an interpretation problem with the previous sets of rules. So it is an issue of how ACTPLA is able to look at the plans and work them out.

Mr Fogg: Statistically they have better results than those who take them to ACAT.

MS LE COUTEUR: As you really would expect, given the considerable resources behind ACTPLA and the more limited resources behind most applicants.

Mr Fogg: Having been in this industry a fair bit of time, I think most applicants go in there with the good intentions of trying to do some good designs. There are those who go in there and want to maximise plot ratios. Quite obviously so am I—I want to get a return on my investment—but to get the return on investment that is required means you have to get certain numbers, and that is why a lot of people are not doing it. But the issue that comes around, unfortunately, is the "not in my backyard" principle. That creates the biggest problem for ACAT.

Again, it goes back to the information that the original people were not aware of. I harp on my little mate from Mawson who was totally incorrect in his understanding of the design principles and the way the process worked. He fired up half the street and two-thirds of the neighbourhood. There were submissions galore. But at the end of the day, it was he and one other who turned up. And there was no change to our plan. The only thing we had to do was tidy up his front yard or something and put some plants in for him. At the end of the day, it was 12 months of unnecessary angst. I suggest that happens 99 per cent more than it probably should. We should have better outcomes and better understandings.

I would also contend that the major contentious issue in the way it is written at the moment is "keeping within the character of the suburb". You take that terminology out and ACAT would not be here to administer all those things. I am not denigrating

any suburbs, but if we want to keep the character of some southern suburbs of Kambah or Wanniassa, so be it. But the trouble is that this is trying to say that we want to keep everything like Forrest, Griffith, Narrabundah, Red Hill, whatever. If we are going to do that, we do not want to keep the character of old Narrabundah, we want it to change. And we are doing that. Having the little cottages still built and things like that are slowly but surely changing, but we need to move with the times. The trouble is, keeping the character of the suburb is the contentious one. If you do nothing else, change that.

THE CHAIR: Do you have any more questions?

MR COE: Just finally, you raised at the very beginning, almost in the first sentence, the issue of certainty. There has certainly been change after change in recent years. What impact does that have on the industry and especially on small developers or small builders?

Mr Smith: You are talking about the consistent changes?

MR COE: Yes; the lack of certainty.

Mr Smith: On all sides you have the complexity of ACTPLA understanding, because the changes are just continually coming in. We need to bring in certainty with the variation plan and be consistent and leave it for X amount of time until we get to the next stage of a total overhaul of the spatial plan or whatever within the ACT. We are going through changes, as I mentioned before, of looking at a new town densification. That is a direction that is needed and, of course, it has a big impact on affordability. These particular changes are just continually bringing uncertainty.

The impact of uncertainty is being encountered and felt at the moment because, once again, you have people that, through necessity, have pre-purchased properties not knowing what the current rules are. When they go to develop they are suddenly going: "Hang on, the rules have changed. This is what I've got to expect." That goes back to what Kristin mentioned before about the necessity to solve so many things that have been successful in other suburban areas that have been pre-planned. Everybody knows what the conditions are and the whole subdivision is being controlled. Stability is something that is really required for quite some period of time without continually going through and changing the rules.

Ms Brookfield: Housing in the ACT, and in other locations, if it is subject to constant change we lose the ability to have repeatable designs, which is the basic principle of volume building and, therefore, affordable building. Thirty to 40 per cent of new homes will come out of the volume builder market. In the ACT that is still actually quite a discrete market. When we look at the largest builder in the ACT, they are not building thousands of homes, because we only build that many across the whole state. We are talking 100ish for the largest builder. To get the economies of scale that come with that type of builder, you need consistency in the rules and the plans. That comes from, as Stephen said, having them apply for a period of longer than 12 months and preferably five years.

The other important thing—I will pick a bit of a bone here—is that there needs to be a

transition when there is a change. Our preference is that you have 12 months transition coming into a change. Six months would be the absolute minimum. But the reality of the industry is that we are designing houses constantly and on the run. We are selling to customers, hopefully, constantly on the run, and we are designing to the codes of the day. Some of us around this sort of table—and that is why HIA exists—try and pay attention and pre-empt what is coming. But most of the industry is out there pedalling, and pedalling really quickly, because they are small businesses.

They do not necessarily know there has been a change until they lodge their next application after the start date of that change. That is a really hard thing for us to manage as an industry association. But it is also why we ask governments to give us a good transition period of at least six months if not 12 months for the changes.

The bone to pick is obviously the interim effect concept. It is actually unique to the ACT as far as I am aware that you can implement a draft code. Other states have clauses along the lines of having regard to a draft code, if one has come out, but not to actually give it legal effect. That is quite unique. That works completely contrary to that whole scenario I have just painted. Tomorrow you might decide to change the rules and we have to work around it, and that does not give us any certainty.

THE CHAIR: We can conclude at that point. You will get a copy of *Hansard* and you will be able to let us know if there is something you believe has been misinterpreted. If members have other questions, they will get them to you as soon as they possibly can so can get back to us as soon as possible. Thank you very much for appearing before us today.

Mr Smith: On behalf of the Housing Industry Association, I would like to thank the committee for hearing us out. I appreciate your time.

THE CHAIR: It is our great pleasure. Thank you very much, Mr Smith, Mr Fogg and Ms Brookfield. The committee will now break and return after lunch to hear from the Australian Institute of Architects (ACT Chapter). The committee stands adjourned until 1.30 pm.

Meeting adjourned at 12.27 until 1.32 pm.

TROBE, MR TONY, President, Australian Institute of Architects (ACT Chapter)
COYLES, MRS NATALIE, Member, Australian Institute of Architects (ACT Chapter)
MORSCHEL, MR ALAN GORDON, Member, Australian Institute of Architects (ACT Chapter)
BAXTER, MR BRENDAN, Architect and Urban Designer, Philip Leeson Architects

THE CHAIR: Good afternoon and welcome to this fifth public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services on draft variation to the territory plan 306, residential development, estate development and leasing codes. As I mentioned this morning, the committee will be holding two additional public hearings on this inquiry during July, and details are available on the committee's webpage or through the secretariat.

I welcome our next witnesses. You are all from the Australian Institute of Architects (ACT Chapter). Welcome, Mr Trobe, Mr Morschel, Mrs Coyles and Mr Baxter. Thank you very much for your time this afternoon. I would like to draw your attention to the protections and obligations afforded by parliamentary privilege and draw your attention to the blue-coloured privilege statement that is before you on the table. Could you confirm that you understand the privilege implications of the statement?

Mrs Coyles: Yes.

Mr Trobe: Yes.

Mr Morschel: Yes.

Mr Baxter: Yes.

THE CHAIR: Thank you very much. We do have your submission, No 12, Mr Trobe. Would you like to make an opening statement or do you want to go to the presentation and we can ask questions as you go through that? How would you like to do it?

Mr Trobe: We probably made a slight tactical error in that we probably should have asked for a bit longer. We did not realise that you could have almost as long as you want. We would not mind getting through the presentation. We will try not to dally too much. We are more than happy for you to interrupt and ask questions.

THE CHAIR: Ask questions as we go along?

Mr Trobe: We would like to finish, that is all.

THE CHAIR: We would like you to finish, too. We do have a printout, which is fairly small.

Mr Trobe: I have given you a CD of that. It is really just a place holder, to give you an idea of where we are up to. It will all be on the PowerPoint.

THE CHAIR: That is very good. We will keep an eye on this and make sure that we are going through it in a timely manner.

Mr Trobe: Sure.

THE CHAIR: If you would like to get started, Mr Trobe, that would be fine.

A PowerPoint presentation was then made—

Mr Trobe: First of all, I would like to thank you for the opportunity to present to the committee. We spend quite a lot of time in various committees, bumping up against the ceiling and trying to get things changed. So it is very nice to have the opportunity to speak to what we see as the power brokers, the decision makers, effectively. You have a big responsibility, and we do not very often get the chance to make the case for various planning issues at this sort of level. So we thank you very much for the opportunity.

Natalie and I were talking just before we came in about the agenda of the Institute of Architects. We think we have an overlap with what the government's agenda is. We are not so much an organisation that has a commercial imperative. If you look at what the mission statement for the Institute of Architects is, effectively our overall top-level mission statement is to make the world a better place through architecture. Some of the things that we are talking about relate more to the big picture attitude. So we are not just dealing with this document in its singularity but more in its context as a planning document and what is ostensibly supposed to be a step forward. We would like to make the point quite clearly that we are looking at a strategic approach.

Talking about the past, with respect to previous incarnations of the territory plan, I can remember sitting in various committees. When they did the big revision of the territory plan in 2008 we were told: "Don't worry for now about asking big-picture questions. We'll sort that out later." Basically we were told that the new territory plan was going to be simpler, better, faster, more effective, but that it was going to be policy neutral. We were all saying, "We should be actually looking at the whole objectives of what the territory plan is about at that stage." We believe that DV 306 has not really taken that opportunity to look at the big picture. It is probably just another place holder that seems to allow the status quo to roll along.

With respect to some of the points we are going to make, we will make them in two sections. One will be general comments about DV 306 and its position in the planning instrument itself and the other will be some more specific comments about some of the details which will probably have been repeated by other organisations.

In terms of the role of architects, Natalie gave me this quote this morning from our professional standards: architects have a fundamental and overriding obligation to serve and promote public interest and, where possible, to contribute to the quality and sustainability of the natural built environment. So that is what we do, and that is the overlapping agenda. We would like to be able to use our skills in innovative ways in planning. We feel often that the nature of the way documents are written actually handcuffs that innovative ability to the detriment of city making and making a place a better city to live in.

We think that the current planning system is letting us down. One of the key issues

goes right back to the genesis of the territory plan. Previously—again, this happened in 2008—the plan was organised to have top-level objectives. They were the things that everything else had to refer to, and in this so-called policy neutral direction. They were slid down to the side and made criteria against certain bits of the code. So you cannot actually ever go and argue that the criteria are more important than the numbers. We feel there has been very much a slide away from a performance-based document in this whole approach.

DV 306 tends to entrench that whole performance-based nature of the planning document, which we think is unfortunate, particularly from the perspective of our institute being handcuffed, as I said, in terms of coming up with innovative designs. We do not think it is a benchmark document anymore. We used to be proud of our planning system. We think it has been a little bit in the quagmire for a while now, and it has not had that overview. In fact, with respect to Caroline, the Greens have seats in the Assembly now, and the whole Greens agenda is perhaps much more important, the sustainability agenda. I think some of that has not been really focused on in terms of the way that particularly DV 306 is coming about.

We have said here that with respect to New South Wales maybe Queanbeyan has a better planning document than Canberra. We throw that out as a slightly facetious comment, but the essence of that is that New South Wales have their SEPP 65 system, which is a much more performance-based peer review, outcomes-based document. It might be well worth the territory having a hard look at what is done elsewhere. Natalie mentioned to me this morning that Victoria reviewed their whole code system on that sort of approach. It may be that we are heading in a contrary direction to other jurisdictions. It might be worth looking at the way those other jurisdictions are addressing outcomes rather than thinking that numbers are going to give us the results that we are looking for.

We also think that the territory plan has become unruly and large. This is a bit of a theatrical throwaway; Alan has some stuff here. Here are the old codes that we used to have. These are the ones that we deal with at the coast. These are Shoalhaven and Eurobodalla shire. It is all in there. That is what you have to look through to get your residential codes. Those are the old codes that—

Mr Morschel: I am on the planning committee of the institute. Those two very slim documents are what the NCDC used to build the bulk of Canberra that we all live in. In the early days of self-government they did not get much thicker and they lasted for quite a few years. We brought along volume 1 of the first territory plan. A good third of that document relates specifically to residential. There have been other codes that have come in on top of that about parking. So it is very unwieldy in comparison to what it used to be.

Mr Trobe: I tried to print it out. I actually tried to find out how many pages were in that document and I could not find a number because it leaks all the way into the ether. It is a massive document. As a practitioner, it is very difficult to find your way around it. That is a slightly theatrical way of making the point that it has become slightly unwieldy and perhaps over-complicated. When you have to try and make all the numbers then you have to make a big document. So it represents the non-performance-based nature of the document.

We also make the comment that one of the bigger picture things is that land sales are driving the planning system a little bit. Canberra probably needs to wean itself off the gravy train of having all of this revenue coming from land sales. That seems to be a big issue. As we were saying earlier, we think it undermines the innovation potential that we as a profession can offer to the Canberra community.

Also, DV 306 lacks clarity. It does not address the sort of vision. It is just another little step along the way that appears to have come out of a reaction to a particular subset of the community's problems with the planning system. There may well be justified complaints about the way the planning system works, but the address of it has not stepped back to look at the big picture planning of Canberra. That is what we are asking for.

We also feel that it lacks compatibility with what appears to be looking at the big picture. The strategic plan is being developed at the moment. There are several things in DV 306 that seem to go against the general trend of the strategic plan. So there may be a bit of a timing issue about the way this document was brought in.

I have already mentioned the performance-based system. It does not have the capacity to allow assessment based on outcomes. That is a really important thing. We will show some slides later on with some very specific examples of buildings or developments that have won awards and represent high levels of design excellence but now are not buildable under the current code system. We will use those as examples.

We feel that the document is basically a piecemeal tick-box approach. Again, there is this obsession with numbers instead of looking at outcomes. As I said earlier, we feel it is a knee-jerk reaction to political expediency. With respect to a lot of the things that we talk about in this, even though we have a slightly different agenda to some of the other peak bodies, we feel that there is concurrence in a lot of the dissatisfaction about not only the way the document has come about but also the direction it is headed in. We do not think we are speaking alone here.

The old system was a much more qualitative and performance-based document than the new one. So we are sliding away from that. I understand that DV 306 was not supposed to be policy neutral, but if it is not it seems to be policy on the run. It is not policy born out of a clear and intellectual review of where we are at, where the country is at and where the planet is at. We feel that somehow or other it is just a little adjustment, a tweaking of the system, where we need a bigger review.

We do not think the direction of where the territory is going, or should be going, is supported by DV 306. There have been a lot of mandatory rules with no criteria introduced into the document, which is unfortunate. As architects we like to think we can come up with some good solutions, and sometimes you might have a solution. You go and talk to the planners at the front counter and they say: "It seems like a sensible idea but you can't do that. It's a mandatory rule." Often there is no opportunity to explore innovative options. With respect to some of the rules, with simple things like some heights or plot ratios, some of those things clearly do not necessarily give you a better outcome.

With respect to the nature of the document, it is large and unwieldy. One thing we do have a bit of a problem with is that things always get put in but never get taken out. There should be a general rule that if you stick one in, you should take a couple out, consolidate them or something. That does not seem to happen much. We also have a problem with the overlap of control.

For instance, the Eurobodalla one talks about bulk and scale. Really, that is what they are interested in. So we have something like heights, number of storeys, building envelopes, setbacks, solar fence, all controlling similar things, and all dispersed widely through the document. We feel there should be an opportunity to consolidate some of those controls. And some of them are a little bit contradictory. We will get to that in a minute when we talk about the detail stuff.

We have the lease and development conditions, which often cause all sorts of problems with planners and in understanding the way the system works. They are often contradictory having regard to what the planning system is intending to produce.

Frankly, I have been doing this for 25 years. I get lost in that document. It is difficult to navigate. You need to be working with it every single day to really understand it. I am sure that the public would be completely lost with a document like that. If I gave them the Eurobodalla shire code, they would get that in 10 minutes. I am not saying it is wrong; it may be that we keep adding to it and do not take away from it. This is not just about DV 306 but DV 306 is adding to this problem of adding to the excess baggage that seems to be in the document. So it is difficult to navigate.

We feel there are some unintended consequences that flow from DV 306. We have a loss of density. The RZ2 code might not be perfect. We might not really want to operate that way, but we have certainly lost a gap in the scale of the city. From high density areas at centres of population, out to the suburbs, there is a little dip where we should be concentrating. We seem to have lost the opportunity to do that. We feel that DV 306 has not helped that. In fact, to the contrary; it seems to have made it much worse. It has encouraged people who have bought properties there to build McMansions. They are not allowed to have more dense populations. That is probably something you have heard before—the McMansions issue.

We feel that the Greens agenda is a little bit defeated by this. We are not throwing any answers on the table but we are saying there is probably an opportunity to review the whole process of the way we have higher urban densities. We do not think DV 306 addresses that. In fact, we think it is to the contrary. To a large extent you are probably stuck with it, but if you are not, we would like you to throw it out.

Alan, you were going to talk a little bit about affordability.

Mr Morschel: Yes, if I could. In front of you you have two pages. The critical part is the two charts at the bottom and they go over the page. They are comparative charts. They were prepared by one of our members who has been involved in more than 25 years—I think Rodney has had quite a few years—of residential design and commercial design in Canberra, of affordable approach. He has had engagements with ACT Housing and he is also very much involved in private sector development as

well in the infill areas.

He did these two charts on a hypothetical site; so I will take you through it briefly. We could spend half an hour on it, but I think it is just important to highlight the components of it. It is a hypothetical exercise, purely numerically based, but we believe quite realistic. He has assumed three blocks. They are at the top. That occurs in both charts and that has a block area of about 2,400 square metres. Under the new 306 code, six units are allowed by interpreting the requirements of that code.

Coming down a couple of lines, you will see that he makes a change between one chart and the other and talks about area per dwelling. The first one is a 200 square metre area of dwelling. The second chart as a comparison is only a 100 square metre dwelling. On the next line both are consistent. That is where he has estimated the construction is $1,500 a square metre. That, in current market terms, is on the affordable end. It is public housing cost rates. So he has certainly done the exercise for housing affordability.

As you follow through then in both examples, you see all the add-ons, costs, fees, land costs et cetera. The telling thing is that if you go for a large footprint—200 square metres; quite large—the cost per dwelling comes out at $778,125.

MS LE COUTEUR: Can I just ask one question?

Mr Morschel: Yes.

MS LE COUTEUR: I think it is slightly highlighted, but it says, "Cost to construct—land plus dwelling plus CUC." In the top line on the second page, you have got "622,500". My question is that at the top it said "excluding the lease variation charge". But you are, in fact, putting it in—

Mr Morschel: Correct.

MS LE COUTEUR: because CUC—I presume you mean change of use charge, so we are talking about the same thing here? So this is, in fact, including LVC?

Mr Morschel: Yes; well picked up.

Mr Trobe: It was a deliberate mistake just to keep you on your toes.

MS LE COUTEUR: To see if I was reading it, yes.

Mr Morschel: Yes, that is an add-in there of land and dwelling et cetera.

MS LE COUTEUR: Do you know how much he has—I know LVC depends where it is. How much has he assumed is LVC? I guess what I am interested in is how much of this is 306 and how much of this is LVC issue.

Mr Morschel: I cannot answer that, I am afraid. I think hypothetically it was an inner north, inner south. I do not think he was going further afield than the inner area of Canberra.

MS LE COUTEUR: Maybe you could get back to us on this. I think it is a real question as to which is the culprit in this particular one.

Mr Morschel: We would be happy to do that, but we also understand that the author of this will be presenting on Friday; that is, Rodney Moss. We can tell him that you have that question specifically and that he will most probably get it directly.

THE CHAIR: That is fine.

Mr Morschel: Nevertheless, in summary what concerned us was the summary line of a 200 square metre property, which is fairly well utilising the area of the block. It is still $778,000 total cost for the unit. When you go over to the smaller one where we have only used the 100 square metre unit, it is still $590,000—call it nearly $600,000 in all costs. It is far from an affordable cost structure. Considering that government has a strong objective for affordable housing, when we were shown this table it was clear that 306 was well and truly sending it in the direction that was not intended to support affordable housing.

Going back to the previous screen, Tony mentioned the unintended consequences. Those figures clearly show that the prices are getting very high. As we said, Rodney has done that at $1,500 a square metre. Private construction costs could be $2,000 to $2,500 to produce a product for the market. We are not surprised when ACTPLA admit that they have had very few applications in the RZ2 area now because of those cost structures. When you think of what a developer will have paid for a block of land and now what they are facing in terms of the very restricted return, it is very difficult for them.

That was why there is conjecture that one of the unintended consequences of this demise of RZ2 will be someone that has purchased land for development, for making a profit. About their only avenue out will be long-term rental at minimal maintenance costs. So I think there is a down siting of the neighbourhood, poorly maintained rental properties. Alternatively, they do what they are only entitled to do, and that is build a single house at 50 per cent of the plot ratio, which produces the McMansions. That is certainly a long way off supporting the densification around local centres and all the benefits that flow on from there in terms of supporting more public transport, walking, cycling, support of the local shopping businesses. McMansions, we do not believe, are going to achieve that objective at all.

Mr Trobe: I will carry on. This review, I think, covers municipal services. We would just like to make mention of TAMS. We feel that TAMS—we call it TAMPLA because—

THE CHAIR: You have made a new name.

Mr Trobe: We have invented a new name, because it seems to be—

THE CHAIR: What does it stand for?

Mr Trobe: Sorry?

THE CHAIR: What does the P-L-A stand for?

Mr Trobe: It is the Territory and Municipal Services Planning Authority rather than—it is a pun, a joke.

THE CHAIR: Okay.

Mr Trobe: A lot of the planning decisions seem to be dominated by utilities rather than concepts of liveability. So they have very prescriptive systems. They have not codified their rules. They are often difficult to understand. It is basically a sort of two-government approach. I will show you that the two organisational structures of the organisations do not touch each other at any point at all, except at the Chief Minister level, I think. There seem to be two completely different systems.

The effects that TAMS have on controlling trees and garbage trucks and verges and access are very important to planning decisions, but they are almost completely separate identities that have their own agendas, which quite often do not seem to go in tandem and give lots of problems on the ground.

Natalie referred to them as silos, or somebody did. There is this silo approach, which should be looked at, given that the remit of this committee is to look at the municipal services aspect of this as well. Again, they seem to be very much interested in risk mitigation rather than outcomes. Again, that is a little bit against the government's policy to generate a liveable city, we believe.

MS LE COUTEUR: Is it mainly risk mitigation or cost mitigation?

Mr Trobe: Both, I suppose. But it is often risk mitigation if they throw it over to someone else to take the risk.

Mr Morschel: Can I add something? During the industry two-way discussions and community discussions with ACTPLA in preparing 306, we made it very clear as industry representatives—it was a collective view—that TAMS was expected to codify all of their requirements. They have not done that. They have been repeatedly asked for a long, long period of time. We did expect in the conversations that we had at that time that they would be part of 306. You read 306 now and it is just a referral to go to TAMS and get their approval. That is a very unsatisfactory and difficult way for us as practitioners in Canberra and our fellow consulting colleagues to work with no codification. There are so many stories of getting different interpretations and different requirements throughout a project or different from one project to the next.

MR COE: Are you talking about things such as we saw on one of your previous slides—the codification of trees, access, rubbish, that sort of stuff?

Mr Morschel: Yes, all of the responsibilities of TAMS. The trees are reasonable. But we gather from our fellow consultants, particularly involved in land development, that it is an ongoing issue of discussion and discussion and discussion with TAMS. We certainly are aware of many of their decisions that are not supporting a sustainable design direction—wider streets than, really, any of the consultants are believing,

contradictions in tree sizes. We would like to see tree-lined streets which are shady and supportive of a good environment, but then we are told that the trees get too big. They block out the streetlight at night and make it unsafe. I think you can imagine which direction TAMS would prefer it to go in. But if codes were prepared and codes could be discussed in their preparation, I am sure a number of those issues could be sorted out. The disappointment, as I said earlier, is that 306 did not get TAMS to do that codification.

Mr Trobe: The next line refers to tree legislation. There are basically three components. TAMS have to look after the street trees. We have the tree protection unit that administers their act, but it can be overridden by ACTPLA. Navigating your way through that when they are not even agreeing to use the Australian standard is a nightmare. I have got projects that have gone to six months waiting until we had sorted the tree out. The tree protection unit are not interested in development at all. They have their own act; so they are not even allowed to consider that as part of their jurisdiction. There is sort of a very big hole in the way the systems work. I think there should be some opportunity taken to address the whole handling of trees.

I wrote a paper to the minister to suggest that there are other ways of doing this. We would be very keen to have a discussion about the way that the whole system could come together in a more effective manner, and a user payment. So it is not necessarily introducing extra levels of government. That was really just an example of some of the issues that are coming up.

The other thing we talked about was ACAT. It is also another issue which is imposing a lot of costs on the community. It would be great if some of that money could be spent somewhere. A lot of the rules that we have to stick to now are ones that have dropped out of ACAT decisions. People on ACAT are often not planners. But the decisions then get written in blood across the whole of the territory. It is sort of also making policy by trench warfare rather than by discussion, which is a bit of a shame.

We all have good examples. I can remember the definition of plot ratio being 35 per cent. ACTPLA used to use 35—anything from 35 to 35.9 was okay. Then suddenly the bombshell was dropped from ACAT, or what was the appeals tribunal then, that that was not to be the case. That changed the wording. The same sort of thing has happened with attics and basements. We will get to that in a minute.

MS LE COUTEUR: Do you think ACAT's influence is one of the reasons why we have got more rules and criteria and lesser performance? Certainly, talking to community groups, they seem to prefer clear rules that they can understand and hold people accountable for?

Mr Morschel: It is an administrative arrangement, as Tony said. Planners do not exist on it. It is not a body that you can go forward to with subjective discussions. They have got to make a hard and fast decision. It takes a legal direction, which is words, numbers and quantities rather than a qualitative approach.

We have mentioned later in the paper—I might just mention it briefly before we cover it more—that there are other alternatives that exist outside the territory where more subjective planning can be discussed and resolved prior to it ever getting involved in

any sort of trench warfare, as Tony said.

Mr Trobe: I just put those two hierarchies there. They are completely independent and there seem to be no linkages between the two. So there may be some opportunity in this review process, given it does cover municipal services, to think a bit about this. COAG has been very much against the sort of two-government approach and this seems to be a prime example of that.

Turning to the summary effects of DV 306, I think all the interim effects that have been introduced have caused confusion and certainly problems at the coalface of development. Certainly colleagues of ours have all had sort of about-turns—"Whoops, we can't do that anymore." The sort of interim nature of some of the clauses in DV 306 has caused problems, and that has had an impact on cost.

We think that introducing DV 306, as we said before, is less useful than the previous legislation in regard to the density issue. Again, I make the point that it appears to be a sort of issue that has happened and to react to a specific situation rather than taking the long bow and seeing what sort of city we really want to have. We will try and get through relatively quickly to leave time for some discussion. Those are the specific issues. Did you want to talk about this one, Brendan?

Mr Baxter: One of the new terms in variation 306 is desired character, which comes up a dozen times in any application. You have to be consistent with the desired character, which refers back to the zone objectives. We think it is poorly defined and will increase uncertainty and appeals. The example on the screen is a 1930 garden city housing precinct, heritage listed, opposite the Manuka shops. You could argue that it is desired character with RZ1, RZ2 or RZ3, depending on your view of whether it is single housing, multiunit housing, low density or medium density. It is a mixture of duplexes and apartments. Apartments are currently banned in RZ1 and RZ2. We do not think we are getting any certainty. It is just so wide open about what it could be. It will be whatever the legal team argues it to be at ACAT. That is a very poor outcome.

Mr Trobe: Another specific issue is the second residence issue. I think it is a general consensus, not just from us but across other parts of the industry, that it seems a very sensible approach to introduce the second residence legislation. We clearly would like it to be clear of a lease variation charge if possible. But we do feel perhaps that that is a little bit of a blunt instrument. Again, Natalie, I do not know if you want to talk about that. It was sort of your point that you made about the conceptual response.

Mrs Coyles: In regard to how we respond as a profession and, I guess, our ability to work within the parameters of the legislation, to put in a control that the second residence can be only 75 if the block is 2,000 square, a second residence of 75 is going to look a bit like a pimple on a pumpkin. It is not necessarily where the density outcomes are the same. You are still talking about an RZ2, with only two residences upon it. Is a plot ratio control where you designate the amount of open space proportionate to the built space more appropriate than a magical number? I guess that is the point there.

Mr Trobe: I think Natalie is right. We approve of the initiative but we think it may be a slightly blunt instrument in regard to the response. Why not 74 or 76 square metres?

Where did the 75 square metres come from? Should it be analysed a bit more carefully and whether it is subject to some more fine-grained approach than would be suggested by us?

The other thing was that, I think, at the moment the secondary dwelling can only be associated with an existing dwelling. So you may well get situations in areas now where someone will do a knock-down and rebuild, want to do a secondary residence but is not permitted to do so because it is not associated with an existing one. They will have to wait a year and then do it. It just seems a bit of a silly thing, particularly if the outcome is about increasing density. So we would suggest that if you are doing a knock-down and rebuild you would be allowed still to do the second residence as part of that development.

MR COE: But are the rules regarding a second residence really just treating the symptoms or problems with dual occupancies at the moment?

Mr Morschel: There are not any problems with the dual occupancies, because no-one is building them.

MS LE COUTEUR: Exactly.

MR COE: That is the issue I am talking about.

Mr Morschel: Yes, we have seen—

MR COE: Are we treating the symptom here by creating a second residence provision?

Mr Morschel: I would agree with you. That is my observation and experience of working in Canberra from when the first dual occupancy was introduced to what was then finally killed off with the requirement of the land subdivision. We have progressively seen a dying off of the dual occupancy. Cost increases, capacity of the second residence to be a viable residence et cetera meant it was always competing to survive. We acknowledge the subdivision requirement was done outside ACTPLA's jurisdiction, but it ended up being the final nail in the coffin. It seems to be the response to the granny flat family unit that many people obviously said, "How are we going to be able to do that?" As we have pointed out here, we think it could be a better planning document.

But coming back to what we said earlier about the scale of residential development in Canberra, dual occupancies did occupy a pretty important part of just getting past the single unit on a large block of land as the extreme to the high rise in the town centre. The dual occupancy was playing a valuable role in increasing, in a small way, density in the suburbs, but we have lost that.

MR COE: In your opinion, would it be preferable to tackle issues with dual occupancies rather than simply address second residences?

Mr Morschel: There are some benefits in that policy as is proposed. There are not great demands on car parking and things of that nature. From an affordable

perspective end of the market, the family unit, the granny flat, could be quite acceptable. But I think ACTPLA is saying, "We've now introduced that; so we're happy to say goodbye to dual occupancy." We would say, "Why can't you do both?" Why can't the dual occupancy policy be resurrected and get rid of the subdivision costs?

Mr Trobe: That is a good question, in fact, and it goes back to this thing we started off with, which is this higher level view of the system, and the fact that we cannot have this typology of housing is a problem. And it stems from the fact that we do not have a clear view of what we want Canberra to be and how we are going to get there. So we are fighting over this middle ground; whereas if there was a clear direction about what we were going to do with our suburbs, then we would probably find it less problematic.

So it seems to be a symptom of the fact that we have a schizophrenic view about the way that Canberra should be developed. That is the reason why we should be having this debate, rather than stepping forward in little blind steps towards no particular goal with DV 306. I think that is a very good question, and it does seem to highlight what we have been talking about in terms of the overarching objectives of us as a community, what we are trying to achieve in our liveability.

MS LE COUTEUR: Possibly continuing on from that, I am not quite sure why we prefer dual occupancies to duplexes. Are you talking about what happens if there is a knock-down and rebuild situation? My understanding is that under RZ1 you would not be able to do row houses, you would not be able to put up a duplex; whereas we could in the past. A dual occupancy is like that. You have got one behind the other. Does that seem sensible? Is that also—

Mr Morschel: The photo that Brendan just showed of Manuka, they were duplexes.

Mr Trobe: And they are not necessarily bad outcomes.

MS LE COUTEUR: Exactly.

Mr Trobe: So we have killed the possibility of using that as an outcome, yes.

THE CHAIR: I am conscious of the time.

MS LE COUTEUR: Sorry.

THE CHAIR: And your desire to get through these.

MS LE COUTEUR: I will shut up.

Mr Trobe: Yes, sure. I will go through these and try to get through them relatively quickly. Basements are another thing that seems to have been knocked on the head by ACAT. Nobody has come back and had a good look at that. Again, we talked about those controls. So long as it does not contradict bulk and scale, why would you not let someone have a basement? It seems to be a very sensible thing. It is a very odd situation at the moment, not having these three storeys in line. And it used to be the

rule that you could but, again, ACAT picked some fine word in the way that it was written and it became a lawyer's rule rather than a planning rule.

The same thing applies with attics. I will tell you a very quick story about attics. I spoke to Richard Johnson, who wrote the rule about attics and what you were allowed to have. I asked him where he got 36 degrees from, and he said: "I was at home in the evening and I got my tape measure out and measured the line of the nosings of my stairs, and it was 36 degrees. And I thought that was probably okay, because that's where you could then fit a staircase under a roofline." And that was it. That was the reason why 36 degrees was written into the rule. The 36 degrees is a bad number, because if you, as a designer, try to design a standard house that is maybe eight metres wide, you have got no space to put the attic in. It does not work properly. So it is a number just dreamed up, out of the air, without any proper analysis.

So we would suggest that that, again, is another thing, like the basements, that does not necessarily contradict bulk and scale but could decrease the footprints we have around town. So we would suggest that a review be done of the attic rule and maybe move to a more sensible number like 45 degrees, which does permit a much more flexibility of using that space in an imaginative way.

THE CHAIR: In order to help you, we have actually explored this solar fence rule and this solar access quite a lot with some of the other witnesses. Unless members want to ask some more questions about that, we could go to the—

Mr Trobe: I am going to, yes, the solar fence rule, exactly. I have had meetings with the MBA and the HIA to discuss that. We are all struggling with the solar access rule.

THE CHAIR: We understand that.

Mr Trobe: You understand the rule?

THE CHAIR: Yes.

Mr Trobe: I will skip through that little bit, but basically the overarching point is that it is another control into the bulk and scale argument. And just to make it fairly graphic, we produced these diagrams, and I think the MBA probably showed you these ones.

THE CHAIR: Yes.

Mr Trobe: We actually produced those, but we shared that information, just to make the point that the before and after are much more difficult. This was supposed to be a snapshot to show effectively that if you look at the diagram here, the solar fence rules are moving. The old rule is at the top. Everybody has put all the houses on the left-hand side of the block, imagining north being to the right. With the new rule, everybody is pushing over to the middle, to avoid the overshadowing. In fact, the outcome is counterproductive. So everybody gets less of a private open space to the north and has to give up some of their south boundary to the neighbour. But if everybody is doing that, it is a less than zero sum gain, if you get my point.

THE CHAIR: Yes.

Mr Trobe: So you can see them all moving over. It is a very simple little graphic to show that the actual outcomes are worse as a result of that. Everybody loses, instead of everybody gaining. So what is happening is that everybody is giving up their rights to their neighbours but they are neighbours as well as being people themselves. So there is a loss of amenity there, we feel, with that particular rule, which probably should be rethought to some extent.

Dwelling replacement policy, again, I think, has been talked about in some detail by the MBA. We do not really support that three-bedroom argument. We agree with them.

Again, I might flick this over to Brendan. These are his images. We were talking earlier about showing you some examples of where there were things that we believed were excellent outcomes and that are now impossible. So I will just flick through the slides as you call them out, Brendan.

Mr Baxter: This is beyond RZ2. For other sites, there are new plot ratio controls where previously there were none. And on large blocks, redevelopments such as what City Edge was, it would restrict potentially the kinds of development outcomes you would get, and I would say a number of these new controls are pushing densities down where there is no need to. And I think that is an unintended consequence.

The next one is RZ2. Again, the provisions would restrict density and dwelling diversity in a number of ways. So this development in Yarralumla by Collins Caddaye Architects has been used by ACTPLA in their fact sheets for RZ2 zones, but you could not get the same design outcome under the new rules.

Mr Trobe: Which is a bit ironic.

MS LE COUTEUR: What actually stops it under the new rules?

Mr Baxter: I think the dwelling rules, the table of number of dwellings per site area, but also things like the four-metre separation rule, which is in the next slide. This maximum of four dwellings per building, and then you need this four-metre break, is, we think, ineffective and inappropriate as an articulation control or a control for bulk and scale. There is an example there from Forrest, which has been there for quite a while now. Again, there are more than four dwellings there. It would sit perfectly well in any inner north or inner south street and it is the sort of outcome that should be permitted.

Mr Trobe: And you could have four dwellings that were 40 metres long or 80 metres long.

Mr Baxter: Well, that is right. And there could be four dwellings in that picture or there could be eight, depending on whether they are terraces or apartments. It does not really matter. It is a rule that is measuring something that is actually hidden from view. You cannot see it.

Mr Trobe: Again, it is a blunt instrument that does not necessarily achieve the required outcomes. So it seems to be ill considered.

Mr Baxter: There are some attempts in variation 306 to increase flexibility of building height, which the institute supports. However, the way the variation goes about it is too prescriptive and inflexible. Again, for what is meant to be the highest density zone—RZ5—there is a new provision that restricts building heights adjoining parks to three storeys, which is inexplicable.

THE CHAIR: Sorry, say that again.

Mr Baxter: So, for RZ5 zone, new buildings adjoining parkland are restricted to three storeys. That is rule 22 in the multi-unit code. Again, there is Kingston Foreshore and a number of places around town where it makes perfect sense to do taller buildings next to parkland.

MS LE COUTEUR: Have you got any idea why?

Mr Baxter: Completely inexplicable so far as we can tell. Again, there is no justification for these rules that we have seen.

Mr Trobe: There was no consultation with industry about bringing this in. We were given it as a fait accompli.

Mr Morschel: Just as an aside, in our submission to ACTPLA, which was a lot more detailed than the one we forwarded to you, we asked a series of questions repeatedly as we were going through the issues, which was an inference that "we would love to come to you, ACTPLA, and have a conversation and a discussion". We have never had any chance since they documented 306 to have any conversation with them on things like that. They could try and explain to us—we would like to know—what the rationale is.

Mr Baxter: There are also new setback rules for residential buildings in commercial zones, which would also decrease density. I know one of the responses has been that new precinct codes will overrule that. But why set up a rule that you immediately want to override with another rule?

Mr Trobe: Again, look how fat it is.

Mr Baxter: That is right.

Mr Trobe: Not many of those have been taken out there. That is a good point that leads on to the increase in mandatory rules. We would like to see criteria against every mandatory rule so that there is an opportunity to look at innovative options and concentrate on outcomes rather than a tick-box solution.

Mr Morschel: I hinted earlier at a system that does not require potentially so many appeal rights and so much mandatory righting, and it is the New South Wales system. It is called SEPP 65. None of us here at the table, we admit, are directly familiar with it, but we have heard general support from fellow practitioners in New South Wales

who have been involved in it or have been on the panels, which are of high professional level. As I understand it, pre-DA submissions are taken to a professional level of about three people who review and discuss with both the owner or the applicant and their consulting team the proposal and discuss the issues through. That is New South Wales wide, I understand; it is not just Sydney.

MS LE COUTEUR: Is that only larger developments, not single residences?

Mr Morschel: They trigger at three storeys. We are not saying that it has to be a slavish copy. Considering the scale of work we have in this town, maybe it is a two-storey trigger, but we would seriously like to take forward that proposal of a peer review at the early stages of design in future discussions with you, government and ACTPLA. We do not deny that there is a cost to that that government would have to find. But we feel that the industry would be happy to start early in the design phase and have a degree of certainty at the end of that design phase rather than the uncertainty that goes all the way through to ACAT. As Tony has been saying, we are continually see the criteria column being filled in with "mandatory" to make it easier to determine before ACAT or to not go to ACAT, and that is not the solution.

Mr Trobe: This is the last slide, so we will have a couple of minutes to respond to some questions or whatever. Basically we think DV 306 is not a good document and it should be scrapped. If that is not possible, we would certainly like some of the comments that have been made to be taken into account, perhaps in the form of some sort of further review. We would like the whole of the planning code, not just DV 306, to concentrate more on outcomes than numbers. We would like it to be looked at in the context of the strategic plan and have an agreed vision about what sort of city we would like to have.

We would like TAMS codified. We would like changes to the plan to be made in a structured manner. We often get these sorts of things all at once or else everything is a drip feed. We should have some sort of punctuation on our road map to making a better plan that is formalised rather than done in an ad hoc manner.

We support the second residence, but we think that should be a little bit more fine grained. And we would like to see all of the bulk and scale controls consolidated in something that is a little more workable. Natalie, you might want to say something to wave the banner, and then we can do questions.

Mrs Coyles: In the opportunity to come and speak with the people responsible for the planning system—fundamentally the government—and for making the city a better place, we see ourselves as allies in that we sit between clients and government and community sweating away over the drawing board trying to please everybody. In trying to do that, working within the parameters that we are given—the legislation—we often have to dumb down our designs and dumb down our proposals to make them approvable under mandatory rules.

It is just so difficult when you can see the potentials. I appreciate why the rules need to be there and why we need to be a regulated industry, but the rules can work for us and against us. We do not want to see them completely scrapped, but it would be nice to be able to have recognition on merits of individual proposals. On complex sites the

unintended consequences are entrenched into reality because of a system that does not have the flexibility to permit good solutions and good outcomes.

MS LE COUTEUR: You suggested scrapping DV 306. You really think the current situation is better than the proposed new one?

Mr Trobe: There is not a lot in there that we think is a step forward. If it is, it is not a step forward in a direction that relates to the bigger picture of a liveable city. It seems to be a very much an ad hoc-ism. We like the second residence, but the rest of the stuff does not really seem to be coordinated into and against a perceived outcome that we think is necessary to discuss and debate.

Mr Morschel: We noted that, as a planning committee, we were looking at DV 306, which is the fine grain of what you can build residentially, this time last year. Three or four months later we were then invited by ACTPLA to look at the strategic plan. We were sitting there quite often thinking the fine-grain detailed comments that have been made here about densification et cetera were contradicting even the government's draft on the strategic plan. We generally supported the strategic plan and encouraged it to go in the direction that it was going in—that is, increase densification, recognise the problems of urban sprawl et cetera. This document, 306, just seems time and time again to contradict that strategic plan. If anything, we would say finalise the strategic plan, have that agreed by the whole of the community and then you have your starting point to which you write your residential codes, community codes, commercial codes et cetera.

MR COE: Picking up on something Ms Coyles said earlier about being the gateway to clients and the gateway to government, how difficult is it for architects to explain the territory plan to clients? Has that turned into a large portion of your work as opposed to actually doing what you do best?

Mrs Coyles: I am happy to respond. I would say it has turned into a large portion of what we do. I work with a larger organisation, and we engage planners on most of our jobs. Even the planners scratch their heads, saying, "In most other places throughout Australia, or potentially through the world, you wouldn't need a planner involved for a simple development application." We are often engaged to work on complex sites, and it is where there are so many grey areas within the existing legislation that we have to assess risk and then seek the developers' decisions as to whether they want to continue down that path or take the risk-averse pattern and dilute the design outcomes. That is often the way it goes because of the economics of the system. They have not got the time and money to fight the legislation at times.

We constantly see the effects of stringent rules that are contradictory to positive outcomes and spend a great deal of time dealing with that. I would say probably half my week is spent dealing with how we are going to respond to issues. As an example, I was trying to find a definition of what "development" means, and you start in the territory plan definition, and that refers you to the Building Act, which then, in turn, refers you to the regulation, which almost sends you back to the territory plan into the zones and things within that. Fundamentally, I put my hands up and said, "Look, you're going to have to go back to the planner, because I can't tell you what 'development' fundamentally is in this particular context."

THE CHAIR: I think we are going to have to stop at that point in order for us to be able to hear from the other witnesses. Thank you very much for appearing before us this afternoon.

Mr Morschel: Thank you for the opportunity.

THE CHAIR: You will get a copy of *Hansard* so that you can see if there is anything that has been misinterpreted, in your opinion. We will get questions to you if we have some other questions. We will have a brief five-minute break and then come back and hear from the next witness.

Short adjournment.

GINGELL, MR NORMAN RICHARD, Private capacity

THE CHAIR: Our next witness today is Mr Norm Gingell. Welcome, and thank you for coming in this afternoon. I would like to draw your attention to the privilege card. Could you confirm your understanding of that?

Mr Gingell: I have read it, and I understand it.

THE CHAIR: Thank you very much. We have your submission, No 6. Would you like to make an opening statement?

Mr Gingell: I would, please, very briefly, probably covering three areas. Firstly, I will give you a bit about my background and the perspective I bring to bear on planning issues. Secondly, I will make a partial apology for some material in my submission to you on the affordability issue. And then I will make some very general comments on my submission and what I intended to do. I do not intend to read it out to you.

My working life has spanned over 30 years in public policy evaluation and formulation at the federal level. In that time one of the major changes, not just in Australia but in all OECD countries, has been to get proper regulatory processes in place so that you can be more assured of better regulatory outcomes. A principal tool has been regulatory analysis, and that is what I have been involved in for over 30 years.

In Australia it sort of kicked off in the Hawke-Keating era. It got much more consolidated in the Howard era. All the Australian jurisdictions have been moving in that direction. In fact, they were required in the mid-90s, with anything to do with national standard setting, to all go through regulatory impact analysis, which basically, at its most simple, involves looking at what the problems are, defining what the objectives are, analysing policy options to achieve the outcomes that the government wants, looking at impacts of those options and then consulting with the community on all of that analysis.

When I first looked at DV 303, to put it mildly, I was dumbfounded at the lack of a scintilla of regulatory analysis in that document. And that has carried on through to today. Coming from the federal sphere, I was aware that the ACT administration reports every year or so federally. There is now an Office of Best Practice Regulation in the department of finance. The ACT provides a bit of a report card each year on its activities in regulatory analysis. So you can imagine my surprise when I picked up 303 and found absolutely none of it.

I thought, "This just cannot be right," having regard to all of this experience I have in policy making. So I wrote to the minister responsible, pointing this out, and essentially asking what had gone wrong. I think the problem is that at the highest levels of government in the ACT there is no real comprehension of what is required for good regulatory analysis. In a way, I am not surprised that 303 and 306 are just continuing that trend.

If you like, I could table that correspondence with the then Deputy Chief Minister,

who, as Treasurer, had nominal responsibility for regulatory policy in the ACT. Her answer to me was that the minister would prepare a regulatory impact statement on draft variation 303, but that would be at the end. So instead of looking at objectives, looking at failings with the current regulatory regime, looking at policy options to address those failings and the impacts of the various options, all the things that the professional bodies have been talking to you about through these hearings, that would all have been done as part of the process of coming to what the recommended DV 306 would be. But none of that has happened.

For the ACT administration, it is just a tack-on. It is not surprising that ACTPLA persists with just putting out its stated position. It does not truly engage with the community on what it is doing and it virtually just thumbs its nose at professional bodies and individual citizens. It just carries on in its own sweet way. I would like to table that correspondence because it is probably important for it to be on the record that there is a gaping hole in the governance arrangements in the ACT.

I do not want to overstate the case. I do not know if it is just planning. Bits and pieces that you see in the press from time to time would indicate it is a more widespread problem in the ACT, and it certainly does not accord with what I naively assumed was the general progress in jurisdictions throughout Australia in improving regulatory processes and regulatory outcomes.

The second thing I wanted to do in my opening comments was to apologise, in a way, for my comment on the affordability of developments in RZ2, when I used a benchmark of $300,000 or so. That is not too badly wrong. Just the other day the government released phase 3 of its housing affordability plan, and I think there are various triggers there going from under $300,000 to the high $300,000s. That is not what I want to apologise for. I want to apologise for my naivety in thinking that when ACTPLA is talking about affordability of housing, it is using that term in the way that most people use it and understand it. In planning law, the affordability of housing has nothing to do with that commonsense interpretation of the term.

I think Mr Coe had a discussion on definitions with ACTPLA early on in your hearings when this came up. Mr Ponton said he was not aware of any definition of affordable housing in planning. In fact the specific question was, "Has it been defined by ACAT?" He said, "I wasn't aware of it." I can inform the committee that it has. ACAT has decided that in the planning context affordable housing and sustainability are non-operational and therefore virtually meaningless in the planning context, in individual DA processes.

The conclusion that ACAT came to was that affordability of housing only makes sense in a relative way. So in Forrest, where there are multimillion dollar properties, if someone does a redevelopment that has a multimillion dollar price tag on it, that is affordable because people have been prepared to pay that sort of money to move into the area. In Weetangera, where I think the maximum property value has been a bit over $1 million, any redevelopment that has a $1 million price tag on it is, by definition, affordable, because people have paid that to move into the area. In terms of deciding whether something is affordable, it is a relative concept. It does not help you to make any determination on what the outcomes in individual suburbs across the ACT are. It is just a meaningless concept.

They have also addressed sustainability. The ACAT position on "sustainable" is that—and I think this is an exact quote—it has no clear meaning in residential housing. So here we have concepts that are being written into DV 306 that are talked about throughout the community but, in a planning context, have no operational significance.

In my submission, in very general terms, what I tried to do was to look at DV 306 and provide an oversight, not only of its deficiencies but, in particular, concentrating on just the RZ2, because they are the issues I am most familiar with, to look at what ACTPLA has got in DV 306 and what it is saying it has got there, and the inconsistencies and contradictions it has got, to try and demonstrate the interrelationships that are going on in it, particularly regarding how non-mandatory rules in the codes get interpreted in the light of how zone objectives are specified.

So with all of this talk about having written in desired character everywhere, and I know the architects were telling you how terrible these mandatory rules are for them, you come and try and confront it when they are not mandatory, and you have got all of these side criteria that give ACTPLA complete discretion as to how they go about deciding on individual DAs. You have this interplay where all those interpretive criteria are interpreted against the zone objective, and they have changed the goalposts without being up-front about it. They have changed the goalposts of how they are describing zone objectives, particularly across RZ2 and RZ3, and you get this interplay between it where the actual rule is almost completely abrogated.

I have tried to give you some examples in the application of it to principal private space where it is just completely out. Of course it is not just in principal private space that the issue arises; the new controls in RZ2 are all discretionary. The four-metre separation is discretionary. A fair bit of the solar stuff is discretionary. They are not mandatory rules. The three hours of sunshine is but a lot of it is not. A lot of the stuff in DV 306, the supposed advances, are not mandatory rules; they are discretionary. In fact at the end of the submission I listed quite a few of them that were not mandatory.

What I tried to do, where I could, was to quantify the sort of impacts. On the very limited data that ACTPLA ever provides about things I was able to get a handle on what it would mean for dual occupancies, the number of dual occupancies, by reducing the minimum size from 800 square metres to 700 square metres, and that came up in your discussions. Mr Coe had an interchange with someone from ACTPLA on that issue. The tenor of it was pretty much that of saying: "Dual occupancies are now almost a dead letter because of changes to the unit titles legislation and therefore we don't need to worry too much about dual occupancies. We don't need to worry about reducing it from 800 to 700, and we're only doing that to make it consistent with multi-unit development controls in RZ2."

I think ACTPLA have been very misleading to the committee on that. If you go to their website, there is an explanation of it. Can I read one section of it to you? I can table this, to save you having to look it up. It is directly from ACTPLA:

> Can I still build two dwellings that sit side by side or one behind the other?

The answer is:

> Yes, but you can't unit title these dwellings. You can subdivide the block (where the zoning and block size allows) into two separate Crown leases and separate services with appropriate easements for access should be provided.

So you can still subdivide. I interpret that to mean you cannot have common property, and of course you cannot have driveways over sewer lines and things like that. I am not saying that every block can now be put into separate dual occupancies. The other whole subclass of dual occupancy that is permitted is when any part of the structures overlap. They can still be unit titled. The reason for the changes to the Unit Titles Act, as I understand it, was that people were getting confused. When they see two separate buildings on a block, they think they are separate houses. They find out years later that they should have set up a body corporate, had a sinking fund and that sort of thing. The Unit Titles Act change was to address a problem in the unit titles legislation. My reading of what is on ACTPLA's website is that, yes, there are some constraints now on unit titling of dual occupancies, but, subject to things like easements and being able to separate the common property, say, a driveway into the house behind, there are no great controls.

I do not have an explanation as to why, as the architects were just telling you, RZ2 dual occupancy has fallen by the wayside. For all I know, it could be lease variation charges, it could be changes in the market; I do not know. But on the sheer mechanics of the impact of the changes to unit titling, I do not believe that ACTPLA can be so dismissive of the scope for dual occupancy in RZ2.

That is really all I wanted to say by way of making comment. I will throw myself on your mercies.

MS LE COUTEUR: You were talking about dual occupancies, and you were basically saying you thought that people in general in RZ1 could subdivide. You were suggesting that people in general with dual occupancies in RZ1 would be able—

Mr Gingell: No, I am not talking about RZ1.

MS LE COUTEUR: Or in RZ2—

Mr Gingell: I want to make this distinction, because most of my knowledge is about RZ2.

MS LE COUTEUR: Okay.

Mr Gingell: I cannot see what is conceptually different.

MS LE COUTEUR: It would not make any difference to what I was going to say, I do not think.

Mr Gingell: It is just that I did not want to mislead you in my answer; that is all.

MS LE COUTEUR: Basically, what you were saying is that while it is difficult to unit—difficult to impossible—

Mr Gingell: Yes.

MS LE COUTEUR: this is not a problem because you can subdivide. I am not aware that blocks in either RZ1 or RZ2 in general can subdivide. Usually, amalgamation is what happens rather than subdivision.

Mr Gingell: That is not—

MS LE COUTEUR: Why—

Mr Gingell: Well—

MS LE COUTEUR: Yes, I am not quite sure. I am not aware of blocks being subdivided. Certainly, we asked this question of ACTPLA and they said there were about 100 dual occupancies in the last year. It has—

Mr Gingell: Where it has led to subdivision? Yes, but—

MS LE COUTEUR: No, no, not where it has led to subdivision.

Mr Gingell: Yes.

MS LE COUTEUR: One hundred dual occupancies, end of story. They are not talking—they were not suggesting sort of—

MR COE: They have been unit titled.

MS LE COUTEUR: No, no, they were saying—the question I asked did not talk about unit title. They said that because of unit titling and the problems with that, there were very few of them. My memory is—I will have to check the transcript—that it was it was about 100 a year. Certainly, it is a very low number. They are not saying they have been unit titled, because you cannot unit title.

Mr Gingell: All I can do is repeat to you what ACTPLA itself says: you can subdivide into two separate crown leases. So unit title—you cannot unit title them—

MS LE COUTEUR: You have got to get approval to subdivide—

Mr Gingell: Yes.

MS LE COUTEUR: I guess my point is that I am not aware that this normally would be approved.

Mr Gingell: Then why is it held up here by ACTPLA—see, I am extracting from the reasons why dual occupancy in RZ2 have gone down, because I do not know. I do not know. But on reading what ACTPLA says about unit titling and dual occupancies, I cannot see why that is quite the bar to dual occupancies that ACTPLA is making out, because you can. What is the constraint on separate titling?

Then there is the other class of dual occupancy where you have some measure of the buildings overlapping. It could be just garden sheds. In fact, they go on to give—it is best if I pass this across so you do not have to chase it yourself or you can chase the original on the website—

MS LE COUTEUR: I guess possibly more relevant to this issue would be, clearly, you have a problem with dual occupancies. What do you think are the negativities of dual occupancies?

Mr Gingell: No, I agree that probably dual occupancies are a better solution in RZ2 than some of the other developments that have been going on. That is not my point. My point is that I tried to quantify the impact of the changes that DV 306 is proposing by reducing the lot size from 800 to 700. I made the calculation using ACTPLA data that it would be a 51 per cent increase in the number of blocks subject to dual occupancy and, therefore, intensification, potential intensification, in RZ2. When I read the transcript of your discussion with them, they pooh-poohed the idea that dual occupancy was still a goer in RZ2 because of unit titling. I am just saying to you that I think you have been misled.

THE CHAIR: We will go back and have a look at that I think, Mr Gingell.

Mr Gingell: Yes.

MR COE: The second paragraph of page 5 of your submission says that instead of being a transition zone between low and high density areas, RZ3 would become predominantly medium density in character under DV 306.

Mr Gingell: Yes.

MR COE: Going on from that, talking about RZ2 again, what role do you think there is for RZ2? In terms of how the boundaries are drawn for RZ2, I would be keen to know your thoughts.

Mr Gingell: Yes. These descriptions that I have used for the current zones are—I have not made them up; they are there as a result of what is written into the current zone objectives. In the case of RZ2, there is no density objective. But it is positioned between RZ1, which is described as low density, and RZ3, which is currently described as—I have got the exact words in my submission—

MR COE: Probably medium density in character.

Mr Gingell: RZ3 is nominated as a zone of transition between low and high density. So RZ2 is low density but not as low density as RZ1 and not as high density as RZ3, because it is the transition zone to medium density. This is the approach that ACAT took in the BDH projects judgement some years back and this is why, even though they have not admitted it in anything I have seen—but I have put it in my submission—ACTPLA have actually changed their interpretation of the RZ2 positions in the last 12 months. Again, that is not on the public record. I am happy to table the correspondence that relates to that issue.

THE CHAIR: Thank you.

MR COE: I go to the second part of the question: what do you think the role should be for RZ2 as the RZ2 areas are currently drawn up in the territory plan?

Mr Gingell: The honest answer is that I do not have enough information to be confident to assert something to you. But I have given it a little bit of thought. It is sort of almost one end of the—this is partly, I suppose, reflecting on Minister Corbell's statement that new dwellings in RZ1 and RZ2 total somewhere between 200 and 500 a year, yet it causes the greatest political angst for the government.

I really wonder whether you cannot get a better solution in RZ1 and RZ2, given they are both currently known as and are low density, except for some of the more recent development activity that has been going on, and whether it would not be more sensible to have a set of rules governing development in those areas and not bother about the distinction between RZ1 and RZ2.

MR COE: Do you mean like precinct codes—like suburb by suburb?

Mr Gingell: I am not sure where precincts codes fit into this. Some of them are—

MR COE: Do you mean like suburb specific?

Mr Gingell: They could be suburb specific. That is one of the options. Look, I am not a town planner.

MR COE: Yes.

Mr Gingell: I do not profess to have the knowledge to confidently say to you, "This is the way to go." I just do not. But I can see there are possibly some arguments for getting a more considered approach to redevelopment in both RZ1 and RZ2, given they are very similar—very similar in style. In respect of your comment, I am still not sure to this day how RZ2 zones or before them A10 as it used to be called, were ever decided.

I am told to go and look at the spatial plan, the Canberra spatial plan. I go and look at that and I find no mention there of anything that indicates that RZ2 is being talked about in that context. All the description there is higher density residential developments being targeted to specific areas. Rather than being dispersed through the suburbs, intensification will occur at major employment centres, Civic, town centres and Barton, along the major Griffin legacy boulevards and Northbourne Avenue and Constitution Avenue and in major urban renewal sites such as Kingston and west Fyshwick. Later on in the document, again, they talk about the town centres of Belconnen, Gungahlin, Woden and around key nodes including Kingston, Dickson, Barton and Russell.

I am at a loss to join up all the description I read from ACTPLA on RZ2 and what is in the spatial plan. So that does not give me any help. I read in the ACTPLA stuff that RZ2 is in fact a protection zone for RZ1. That is the way they describe it in their little, short, succinct guides to DV 306 that they produced when they released that.

I have never understood the word—in fact, the architects used it. The words "local centre" crept into their description of RZ2. I live in Weetangera. We have a local centre. Now, unless ministers—we have had two planning ministers—Ministers Corbell and Barr must have pretty strange views about how much foot traffic there is going to be between one end of the development, photocopying, and the other end where Brazilians are getting done. There must be a lot more foot traffic that they think is happening there in Weetangera than I am ever aware of for those sorts of businesses.

That is the local centre. Can you tell me why RZ2 ends at 63 Shumack Street and 65 Shumack Street is RZ1? Same suburb; same street; same bus route. The bus route goes all the way round Shumack. I think it just shows you that there is a complete lack of consistency across a lot of the planning in the ACT.

THE CHAIR: Mr Coe, do you have any more questions?

MR COE: There are more but I am conscious of the time.

THE CHAIR: Yes.

MR COE: I might send you an email. Is that okay?

Mr Gingell: Yes, that is fine.

MR COE: Through the committee.

Mr Gingell: Yes.

THE CHAIR: Okay, we will do that through the secretary.

Mr Gingell: And I will respond as quickly as I possibly can.

THE CHAIR: Yes, of course. We will send you a copy of the *Hansard* as well.

Mr Gingell: Thank you.

THE CHAIR: You can see if there is anything you believe has been inaccurately interpreted by Hansard.

Mr Gingell: Yes. Can I thank you? Just like the architects, this is the first process where there has been engagement. You at least have responded with questions. I put the effort in to make submissions on 303 and 306 and I was completely ignored. I am not the only one to have told you, I am sure, that you keep making submissions on these issues and you get absolutely no response.

THE CHAIR: We thank you, Mr Gingell, both for your submission and also for appearing before us.

MS LE COUTEUR: Yes.

THE CHAIR: We will get those additional questions to you. I apologise for the shortness of time.

Mr Gingell: That is not a problem.

THE CHAIR: We will get those questions to you and you will get the answers back to us. We appreciate that very much. Thank you very much for your time, Mr Gingell.

HOLLAND, MR JOHN, Private capacity

THE CHAIR: Welcome, Mr Holland.

Mr Holland: Thank you. John Holland, concerned resident and activist in the development area.

THE CHAIR: Could I have an indication from you that you understand the privilege implications of the statement on the table beside you on the blue card?

Mr Holland: Yes, I understand.

THE CHAIR: We have your submission, Mr Holland. Do you want to make some opening remarks?

Mr Holland: I will probably spend only about half the time on DV 306 in the nitty-gritty. I have only been interested in planning for about the last four years, and that includes starting off with the immigration bridge. And then I consulted with people who knew far more than I did and said, "I thought Canberra was a planned city," and they said, "Oh, yeah, right, it used to be." So then into our area in Marsden Street we had developers turn up and these developers were very insensitive to what was going on. They were also very dishonest about what they were doing. They were telling us that they were going to buy the house for their family and all that sort of thing and then the one next door for the old parents. So, I came up against development and developers in their worst form.

Of course, as a result of that, I came into contact with a lot of other people who had had similar experiences. I did not even know I lived in a zone, and then I realised I was an RZ2 person. The architects were saying earlier that they did not understand why DV 306 is the way it is. The fact is that a lot of people, including ourselves, put up opposition to the way we were treated and all that sort of thing and what was going on. The government finally realised they had got it wrong. There were a lot of people involved. There were a lot of people screaming at them. And this was corrected. The developers and architects, we just found out, said, "Hey, this gives them something to whinge about," particularly architects. Only about two per cent of houses in Australia are designed by architects, but they design most of the multi-units. You have to have a designer for that.

Anyway, after Marsden Street started up, we had this Kafkaesque engagement with ACTPLA, which I had never had any contact with before. I got great insight into the way ACT planning is done. ACTPLA is very much pro developer. The rules are interpreted very much in an ad hoc manner. Our treatment was absolutely the worst I have ever received. I have never come across a government department anywhere I have lived in Australia at the local level, or even with Centrelink, that treats members of the public as distinct from developers with such contempt.

We also came across dirty tactics used by the developer to win, and ACTPLA were fully supporting them. In the process of dealing with that, we came across incredible incompetency from staff. When we had to go to mediation at ACAT, the person who was our assessment officer—and all this had finally gone through the major projects

team at ACTPLA—was bushed within 10 minutes. He did not know what was going on. So then another person from ACTPLA took over, but when we got into ACAT, that person himself put up a really poor showing. So that is the experience I had.

With ACAT, when you are forced into that situation, I would only describe ACAT as an absolutely ghastly experience. About 94 people had initially put in objections then more did later. So we had about 120 people who were objecting. We decided to trim that down to about 30 people going to ACAT. When we got to ACAT, it was an absolutely ghastly experience because there were nine lawyers there. Nine lawyers. Fortunately, there was an architect on the tribunal. We would never have won without having somebody who really understood the building codes inside out. If he was not there, we would not have won.

I do not claim to understand it all or have any sort of ability to give an overview. I am strictly grassroots. I am not in the camp, either, with people who are criticising DV 306 and saying that we need to do more research, get more evidence together and get more resources, because I do not believe that will happen. I noted today that you have had the vested interest groups here, and they have been saying what you would expect them to say, because they are all making money out of this game, particularly in RZ2. But you have not had any impartial town planners who could put things in better perspective. But I am sure, as politicians, you are awake up to who is pushing their own barrow and who is not.

I will go to DV 306. Firstly, I commiserate with the committee in having to deal with all this stuff. Basically DV 306 is yet another patch-up job on the territory plan. Professionals I have come in contact with since I have got interested in planning all bag it out, they do not like it, and we heard some of that happening today.

What happened is that Canberra began with the Griffin plan. Politicians had a go at that and everything got stalled. Then Menzies came along and we had the NCDC. That went well and then we had self-government. We had the division of powers between the NCA and ACT planning. As a result of that, we have not had for a long time an integrated, overarching plan. That has gone more and more in that direction.

We are now pretty much the same as Melbourne, Sydney or any other major city around the world. We have planning that is very piecemeal. We started off as a planned city, the only one in Australia to have a total plan and one of the few in the world. We are now moving in another direction from that.

The NCA in the meantime has struggled to find a role for itself. In recent times I have had frequent contact with people there and they certainly have got a lot better in their particular area. I think ACTPLA has degenerated into a development agency virtually, a revenue raiser. These zones that we have been talking about all day are a terribly crude method of town planning. I live in Bates Street in Dickson. One side of the road is exactly the same as the other, but one side is RZ1 and the other is RZ2. For a person who is looking at it from a commonsense point of view, you just cannot see the rationale about it.

The problem is we had really well designed suburbs. They have been copied all around Australia in the outer suburbs of Melbourne and Sydney. The NCDC model.

Then in come the revenue raisers, and they say, "Okay, what we're going to do is we're going to knock down a lot of the old areas and then we're going to put up in their place whatever goes." You can put up a mansion, you can put up ugly units or whatever. Naturally, people in Canberra like being in a planned city, so they put up a lot of objections to this sort of thing.

I was talking to Sue Holliday, whom you might know of. She is one of Australia's leading planners. She works as a consultant now and she has been an academic. At the Walter Burley Griffin memorial lecture in November last year she was saying: "Whatever you do, don't touch the old guts of the city. Don't move in on those." Yes, infill is needed, but the infill she was talking about was around the various centres, commercial centres.

There is a lot of sense in that. What I find where I live and in many areas around it is that if any house comes on the market it is immediately sold. Some of them do not even come on the market. So there is a great need for the houses in the RZ1, 2 and what is left of the 3 and 4 zones. When you have got this supposed demand for units and this type of thing, it is a far better idea from my point of view to leave the old areas alone. People need to have them; they want them. There are a lot of children in my suburb. Old Dickson is supposed to be rundown with old people there. I have much more chance of being run down by a stroller than a car where I am.

If you have got this need for single people or for couples without children and that type of thing, there is nothing to stop the greenfields being used for that and developing really nice high density areas. Not only would young people or single people like to live in that sort of singles scene, but then you would get springing up more restaurants, cafes and bars in those areas. A big shopping centre would probably spring up pretty quickly and certainly public transport would have to increase because of the larger numbers of people there.

I do not think that zoning is very good planning at all, but it is there. Because we are in a situation now of Melbourne and Sydney-type planning where, you know, "We've made it, we're part of that scene," we no longer have an overall plan for Canberra. I have read the *Hansard* submissions, and self-interest prevails. Everyone comes along with their own ideas. We have no overarching plan, nothing to refer to. So when you are asking opinions of people, including myself, everyone is pulling in different directions. That is going to be very hard for you to resolve and to come up with some sort of recommendations about DV 306.

The other thing you have to realise—this is a problem—is that DV 306, even if you sort of nail it, will not last long, and then you are going to have to come up with yet another patchwork plan. There are already plenty of suggestions around now about do we ditch 306 or do we improve it. If you ditch it, it is going to lead to another. Some people are saying today it is far too big.

The big problem you have got there is with ACTPLA. We went to ACAT, as many other people have, and we had initially a town planner draw up the arguments against this project.

A lot of the objections—I have got them marked here—that then went into ACAT

afterwards, after the approval was given, were based on ACTPLA's own rules and regulations. ACTPLA approves the plans knowing full well—it just rubber stamps them when it comes from a developer—that it is ignoring its own mandatory rules. That includes all the mandatory ones.

You go to ACAT as we did and say, "What are you doing? You can't approve this. Your own regulations are being broken here." Then they sit back and say, "Okay, we can't talk to you anymore. You've got to go to ACAT." It costs $40,000 to $60,000 to go to ACAT with a decent team. You have got to have a barrister, you have got to have an architect, and you need some expert witnesses. This is a really dirty way to play, but there it is; they are doing it.

The other thing they do is that if the committee comes up with DV 306 in some form or other, obviously, no matter what you come up with and how detailed the recommendations are, they are going to ignore it. They do that as a matter of course. They will ignore what is there and they will go about things in their own way.

This is also seen, interestingly enough, with the McMansions. I read with interest the comments on McMansions that have been made over the last few sessions. You are all saying, "Gee, these McMansions are 50 per cent plot ratio; gee, aren't they big?" They are big all right, but they are not 50 per cent plot ratio; they are well above it. We have four in our area. I did a basic calculation. When it was pointed out to me by architects—we have about six architects in our neighbourhood—that they are well above the plot ratio, I did a back-of-the-envelope figure, and it means that if you have a single-storey house it can take up 50 per cent of the block, but if you have two storeys then, taking into account the GFA, the footprint, shrinks, so you are down to filling up about one-third of the block.

You will see houses all around Canberra that are double storey and take up much more than a third of the block. There are two ways that it can be done. Number one, you build a 50 per cent house, single storey, and a few years later you apply to put on a second storey. That is going on. The other thing that goes on is that the houses are knocked down, and the builders know, the architects know, that if the client wants a big house, they are going to get it. I said to an architect, "As far as I know, the next stage is a certifier." The certifiers have to tell ACTPLA—they are private certifiers—that everything is okay. I said, "They're not okay," and he said, "No, they're not." I said, "Do you reckon there's money changing hands here?" He said, "It looks like it." So at the moment ACTPLA are turning their back on this or they are engaged in it; I do not know.

You are going to have to work hard to come up with something. I do not recommend, by the way, that you ditch DV 306. I reckon you should work on it and get something in place. If you knock it back, ACTPLA will only rehash and send it back. No-one is going to be happy with it and you will not go too much further down the track before you have to come up with something new anyway, unless it is decided by all in the Assembly—not just the government—that we should go into phase 3 of Canberra's planning. To do that you would have to decide, first and foremost, that Canberra is going to remain a planned city with an integrated plan, which it does not have at the moment.

So there was the Griffin plan; at the end of the day, it staggered. Then you went to the NCDC—very successful. Now we have very much piecemeal, ad hoc planning. This is not just my view. I was at a talk by Aldo Giurgola. He is an expert on Walter Burley Griffin's plans. He was talking about Parliament House but he digressed and said that he thought that in Canberra there was now just ad hoc planning. He was talking about the ACT government's responsibility.

Planning ad hoc really means no planning. So if the Assembly decides, "Okay, DV 306, we will keep it," it is symptomatic of not having an overarching plan. If you want to move into the future, you have to decide whether you want one, and if you do want one, it will not be hard to bring about, because, for a start, we have already been there and done that. No-one, least of all me, would propose that we have a third tier of bureaucracy. But you should have some advisory body that pulls together the new plan, community and experts should all contribute to it, which is is an advance on what we are doing at the moment.

That body would also try to supervise, but, as I say, it should not be set up as a regulatory body. Two are enough—to get NCA to coordinate with ACTPLA. If you do that, can I suggest that something like that would stop all of this going on. I used to work in the department of works, and I used to get all of these complaints. They were about my kerb, my drive, a pothole in the front of the road, and that was it. That is how it should be with planning. And it would be relatively easy to string together an overarching plan.

There is another way you could go about it, and that is by saying, "What about all the plans we've got?" With the current plans that we have—and I am not an expert in this area—I have a dozen plans listed here, and no-one has tried to reconcile them. When you approach ACTPLA about these other plans—neighbourhood plans, a spatial plan, master plans for shopping centres and precinct codes—they just say, "Well, the territory plan prevails." Of course we all know that is rather a mess. So to bring together those plans is one thing. But coming up with a new plan for the next 20 or 30 years is another way of doing it, and then to knock these plans out.

There is another way forward. As I said, I do not want to get into the position where I am saying that I can see from above all the things that need to be done. Nor do I want to say there should be more research, more effort and more expense. We have in our town the most amazing set of people with qualifications who keep writing to the government, seeing the government, meeting with the government, consulting with the government, and they are always totally ignored.

It would not be too much of an effort to try and bring together views about where Canberra should be going and then any planners coming together should be the best. They should be well paid and they should come up with a plan. Further down the track, with ACTPLA, given their incompetence, given that no-one trusts them, given that my own experience with them is so ghastly, the government here has no excuse whatsoever to have a lousy planning body. Sixty per cent of the government's income roughly comes from real estate, land and building. So surely we can afford a decent planning body. That would require people in the planning body to be fully qualified, to be paid appropriately and to have enough of them.

I am here to put DV 306 in context. If I were you, I would certainly go and put something out, but it has to be ongoing. That document, instead of getting smaller, as the architects want, could get a whole lot thicker.

Government keeps coming up with things—what we need, why we need RZ2 in the way that it is, that we need sustainability, affordability, transport, revitalisation and downsizing. Every one of those arguments can be knocked on the head. I have looked at stuff from the Grattan Institute, Save our Suburbs. I have used my own eyes and have looked at all of those flats that have gone up in Braddon. Civic is going down the gurgler. Kingston was a dead area; you have built a whole lot of high rise around there and it is still a dead area. So the arguments just do not hold up.

It is like having transport corridors—yes, provided everyone is going to use the bus. As we know, people in this day and age work all over the place, and many work 24/7, so all of these arguments can be easily knocked on the head.

Affordability—that is one that we came up with today. Has anyone noticed any drop in the price of units around Canberra? $425,000 is what you pay—at least that—for a decent two-bedroom unit in Dickson, or probably more. So that is not affordable. You do not have to pay a whole lot more to get a house further out.

I have also worked out that some of these figures that they give are so mickey mouse. If you take a block of land with a house and you work out the cost of the living room you have got—that is, what it costs you to buy the land and the house—you will find, as I did, that a unit is three times dearer than a modest house. So when you are an investor, what do you invest in? You have a house somewhere. The house goes down in value. It may go up if you are in a good area, but it is the land that appreciates in value. So these poor people are sitting in units, the land is not going up in value and they have paid three times more for the living space they are in compared to somebody living in a modest house.

Of course, you then talk about sustainability. Numerous studies have shown that having, say, a six-star house does not mean to say it is going to be energy efficient. It depends. I was a member the New Millwrights many years ago. Derek Wrigley was the architect who set it up. Every study shows that it is about your lifestyle. How you live determines how much energy you use.

Also we have knock-downs going on left, right and centre here. I did some calculations using figures given on the site for the *Carbon Cops*, a TV program that was on a while ago. If you have two houses side by side, and one is renovated and retrofitted and the other is a knock-down and built to a six-star standard, it takes 137 years before you get any payback. If you compare the paybacks, it takes 137 years before the knock-down/rebuild house will finally catch up with the retrofitted because of the embedded carbon lost in the house that has been knocked down. And it is more for a concrete house. If you build a house with a lot of concrete, like the passive solar houses these days, you are looking at about 150 years. I am wondering whether the government, in trying to reduce emissions by 40 per cent, has taken into account the massive amount of emissions that we get from knock-downs—

THE CHAIR: Mr Holland, we have run out of time.

Mr Holland: Yes.

THE CHAIR: Ms Le Couteur does not have any questions. She does need to go. She has another hearing to go to. Mr Coe?

MR COE: Very briefly, in a minute or two, could you comment on the accessibility of the document? With the territory plan, given your experiences with ACAT, do you feel that you were able to grasp not only what it says but what the intentions are of the relevant sections?

Mr Holland: No-one will be able to grasp DV 306 and no-one will be able to grasp anything that comes out of ACAT. When you hark back to the territory plan, according to the professionals that I mix with, it is such a mess. I am saying that you need to go back and come up with a decent plan for Canberra. It is as simple as that. In your situation, you have to come up with something. I wish you the best of luck. You will come up with something, but what you come up with will not alleviate anything.

THE CHAIR: Thank you very much for your time this afternoon, Mr Holland. You will get a copy of the *Hansard*, and you will be able to correct anything that you think is a misinterpretation by Hansard. Members will get questions to you that they may have afterwards. Because of the shortness of time, they may have some other questions. They will give them to you and if you could turn them around as quickly as you are able to, that would be great.

I thank everyone for their time this afternoon and this morning. The committee will reconvene at 2 pm on Friday, 20 July, when we will hear from Purdon Associates and Cox Architecture. As I indicated at the start of the hearing, further details are available on the committee's webpage or through the secretariat. The hearing is now adjourned.

The committee adjourned at 3.37 pm.