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, 25 JULY 2012

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 9 August 2011

The committee met at 10.31 am.

YMER, DR SANIE, private capacity
TUCKER, MR WILLIAM, private capacity

THE CHAIR: I declare open this final public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services on draft variation to the territory plan No 306, residential development, estate development and leasing codes. Transcripts of the committee's six previous hearings on this inquiry are available on the committee's webpage.

On behalf of the committee, I would like to welcome Dr Sanie Ymer and Mr William Tucker. I would like to draw your attention to the blue card on the table which sets out obligations under parliamentary privilege. I would like you to confirm that you understand the obligations that that privilege card describes.

Dr Ymer: Yes.

Mr Tucker: Yes.

THE CHAIR: Thank you. We have your submission No 5 with us. Would you like to make some opening remarks?

Dr Ymer: I would like to take a couple of minutes to make some opening remarks. We thank the committee for providing us with an opportunity to participate in this hearing. We do not have planning expertise. However, as members of the community, I think our role is to highlight issues that we have identified as long-term residents in our local community, which is the Turner school area, particularly those with broader implications. We will also comment on the practicality of any suggested solutions where we can.

In previous submissions we have emphasised the sustainability of cities being underpinned by diverse communities who care about their environment. We would like to note that this was a focus of a recent *Scientific American* feature on cities last September where it was also noted that diverse communities are also a source of innovative solutions for sustainability.

Critical to this is the provision of high quality diverse accommodation opportunities and a utilisation of locally established infrastructure. In our case, that is the school. In previous submissions we have also identified issues regarding the fact that development in the area has been largely driven by the investor market, and we have seen the provision of predominantly one and two-bedroom apartments within walking distance to the school.

This has largely attracted a transient population with a substantial increase in cars in a number of narrow streets in the area around the school. At the same time, families have also left the area but the school has increased in size, indicating that families are driving back in to drop off kids on the way to work. This may be potentially contributing to urban sprawl. We also have provided and have ABS stats that we have analysed which lend weight to these kinds of observations.

Variation 306 is a complex document, and we have focused our comments on RZ3 zoning and multi-unit development issues. We were pleased when the draft variation was first released that the issues of diversity and families living in the inner city were recognised. The dwelling replacement provision is a step in this direction. We concede that it may be a blunt instrument, but these issues need to be addressed urgently, and more nuanced approaches would take time to develop and consult upon.

I mentioned that our concern is one of urgency. In previous submissions we noted that the lifting of the moratorium in areas adjacent to both Turner school and Lyneham high school in variation 310 without any provisions and incentives to provide diverse accommodation options would, if the trend continued, result in one-bedroom apartments being built across the road from the school.

We note that almost half the remaining houses in Hartley Street, which is where Turner school is and where we live, are now owned by a developer and a DA has been submitted to ACTPLA for 14 one-bedroom apartments on Goodwin Street, which is where Lyneham high school is situated.

These are issues we raised in our submissions to variation 310 and the inner north inquiry into RZ3 and RZ4 planning. We are somewhat disappointed that we are back at this committee raising the same issues. We had hoped that in the past 18 months or so since the inquiry more multifaceted approaches would have been developed to address the diversity issues.

THE CHAIR: Thank you, Dr Ymer. Mr Tucker, did you want to make any remarks?

Mr Tucker: No, thank you.

THE CHAIR: I will open it up for questions.

MS LE COUTEUR: I note your comments about there being no townhouses being built around the Turner school area. I do not know if you have had a chance to look at some of the evidence that we got from the architects and from Purdon Associates.

Dr Ymer: We did have a quick look through the draft *Hansard* last night. I am not sure which submissions we were looking at, but we did note that there were a couple of alternative solutions to that diversity issue or around the dwelling replacement issue.

MS LE COUTEUR: They noted that the economics of development in the established areas, where basically the cost of the land is very high, are militating against a townhouse solution. To my mind, that would be a reasonable summary of what they are saying, that for people to do something that is saleable, given the cost they would have to pay for the land, they are going to build as much as they can and will use all the GFA they possibly can, and they are probably not going to end up with the solutions that you are looking at. Given the prices of land in the area you are talking about, what do you think the government actually could do to achieve townhouses being built in that area?

Mr Tucker: As Sanie said initially, we are not planning experts, but I think an issue is the market that developers are targeting when they are building properties. They are targeting largely the investor market, for which the one-bedroom units are suitable—small outlay, relatively high rental return proportion. If a different market was targeted by providing larger, higher quality developments, which could be townhouses, that could change the demand.

I know that people are still buying some houses close to the city, knocking them down and rebuilding. So there is a market for people who have that sort of money to spend to provide themselves with something that is high quality. If developers were building those in the form of townhouses or some other high quality development, I think there would be a market. It would be a different market. If the government could encourage those sorts of developments I think that could still be a source of profit for developers.

MS LE COUTEUR: How do you think they should encourage those sorts of developments?

Mr Tucker: There were some ideas in other submissions—incentives like the lease variation fee being modified, depending on the type of development. There were also some other ideas in other submissions you received. Again, I would say that we are not the experts.

MS LE COUTEUR: Sure.

THE CHAIR: You have read the evidence. Some of the evidence we have had presented to us is that they are actually satisfying the market and that a lot of this is market driven. Also, of course, as Ms Le Couteur pointed out, it is the cost factor of how they can get a return on how much they have to spend to build the actual units or buildings on the particular blocks that are amalgamated. That seems to be the driving factor in a lot of these cases. But one of the other witnesses did actually say that the market may be changing slightly in that more families may be looking for the kind of accommodation that you were describing.

MR COE: You mentioned earlier that, once again, you are back with another planning issue of sorts. Do you have any ideas about how this sort of situation not necessarily can be avoided, because it is good to have the dialogue, but is there a more constructive way that residents can be engaged proactively rather than reactively?

Dr Ymer: I seem to recall that during the inquiry we mentioned that Adelaide had an expert group of people that would consult and provide their expertise around planning issues. I do not know how that was received subsequently and whether the government is actually looking at that kind of panel of experts of some sort to advise on planning issues, because planning is a multifaceted problem or issue.

We talked about what the market does, but I have just come back from Brussels. People with families live in the inner city in apartments. The difference is that people live in apartments longer. How do we provide incentives to get people to live in apartments longer? You build apartments that are going to be there for people to live in long term. So there are a number of things you need to look at in terms of providing incentives. I thought perhaps some kind of expert group would be useful. Then, as a

community, we could respond to suggestions regarding the on-the-ground practicalities of that. But I do not know what happened to that kind of suggestion from the inquiry and whether this is something that a government could do.

MR COE: Sure. Regarding the territory plan and this variation, I have asked most witnesses about how accessible they feel the document is and how readable it is and how easy it is to interpret. As people who are self-confessed non-experts in planning, how have you found the experience? Do you actually feel like you are in a position whereby you are able to interpret what the intentions are?

Mr Tucker: We are not experienced in planning but we have some experience in legislation; so that helps. We have focused on certain areas and become familiar with the way the issues are expressed in those areas: It took some time to be in a position where we felt that we could understand it and make constructive comments. But we think that we are able to do that in the areas that we have focused on. That does not mean it is readily accessible to someone coming to it new.

Dr Ymer: The other issue is that this is not our full-time job. It is a huge document. We cannot go into it on everything in any depth. That is a challenge for us. We have families and we work. Often the challenge is just trying to understand it, go through the complexities of how the codes work. We now have some experience. But really we just do not have the time to do it justice.

One other minor thing: when we did try to print it, I think it was originally only available as a PDF and we had trouble printing it off. We solved that problem, but there was an issue of accessibility initially with that consultation.

MS LE COUTEUR: I can say that we all had those problems. It is huge and very hard.

Dr Ymer: I guess we are all interested in good planning outcomes and we want to try and make that kind of difference too. So it is difficult and challenging to read those documents.

MS LE COUTEUR: I was interested in your positive comments about apartments. I appreciate you are RZ3. We have tended to think more about RZ2 because there is a lot more conflict in the RZ2 areas. But apartments are not allowed in RZ2 areas. You would think that apartments are quite reasonable parts of the ACT landscape?

Mr Tucker: I think that diversity in general is a valuable thing and that can be in RZ2 as well. Townhouses, apartments and mixed housing are a good thing.

Dr Ymer: In some of the submissions that we read quickly last night, there is sometimes an assumption about what people want in terms of accommodation. There are comments about families having a preference for detached housing and living in the suburbs. That is not always the case. We certainly do not. I think that even with empty-nesters, there is a presumption that they will need smaller apartments. But Will's parents live in quite a large apartment because they have issues around grandchildren and so on. So there is a bit of an assumption about what people want in the marketplace. I think it would be good to address that in some way. If you provide

the diversity and it suits people's needs, those who want to live in that area will live in that area.

Mr Tucker: I think families do not want the apartments that are currently being constructed because they are often poorly built. The apartments are not big enough and the environment is not made pleasant enough in the complexes to encourage long-term residents at all, let alone families. But if nicer apartments, larger apartments were built, I think families would want them. We were looking at apartments ourselves for our family. We could not find anything suitable. So we stayed in our house and extended our house.

Dr Ymer: And that was partly due to the fact that we had commitments to schools in the area. So I guess that if they built it, they would come. It is that sort of thing.

THE CHAIR: Could you talk a little about your comments in respect of solar access?

Mr Tucker: I will have to refresh my memory on that.

THE CHAIR: On page 2 of your submission you have comments about solar access. This has been discussed a lot by different witnesses as we have gone along—whether the new regulations under 306 would be effective or not.

Mr Tucker: I am looking at page 2. I am not sure which one is about solar access. Which rule and criteria was that in relation to?

THE CHAIR: It is the top reference, R20 and C20 of RZ3. Anyway, it is all right. You have written it down there. I just wondered if you wanted to expand on it at all.

Mr Tucker: That comment is largely about the number of storeys.

THE CHAIR: Yes, that is right and the solar access.

Mr Tucker: We are concerned that if there are additional storeys it would have an impact on solar access. We are also concerned that the criteria did not match what was said in the introductory information about what it was meant to do.

THE CHAIR: So you do not think it would achieve what it is meant to achieve?

Mr Tucker: I am not sure which—

THE CHAIR: We have had a lot of commentary around solar access; so we will just take your comments into account as well. You also have some comments about site open space on the bottom of that page R38. There has also been quite a bit of commentary about that. Do you want to expand on that or not?

Mr Tucker: The comment there is really that the rule was not clear. If it was clear, I probably would have made no comment.

THE CHAIR: So you think it needs to be clearer in the way it is expressed?

Mr Tucker: Yes.

MS LE COUTEUR: Possibly your major point is on page 3 with regard to rule 52, which refers to minimum areas. One of the other things that the government and probably most of the planning committee are concerned about is housing affordability. Clearly, generally the bigger it is the more it costs. We have a problem in the ACT of housing affordability. I am just wondering how you see that would work if we are requiring houses to be bigger.

Mr Tucker: I think there needs to be diversity, and diversity in sizes as well. The minimum size for a three-bedroom unit is 95 square metres, which might be too small for some families but not for others.

MS LE COUTEUR: But could not the 95 square metres stay as the minimum and there being nothing to stop the units being bigger? If you look at your standard ex-government three-bedroom house, that was around that sort of size. Canberra grew up in that size of dwelling.

Dr Ymer: I agree. Our original house was 110 square metres with two kids, and we were there for a long time that way.

Mr Tucker: Our concern was that developers would just build the minimum and then they would all be 95 square metres. If developers are building some larger as well as smaller three-bedroom units, that would be good.

MS LE COUTEUR: I think what you can see is that they are, but the bigger ones cost a lot more. Kingston Foreshore has some very large apartments. There are some places with some very large units. The issue is the cost of them. I guess that is why I am not sure that we should be increasing the minimum size. Not everyone has got over $1 million to buy their apartment. I am not quite sure how we can make them bigger and affordable.

Mr Tucker: Part of my suggestion there is that it need not apply to every three bedroom unit but maybe just to some. I related that to the building replacement. If a developer is replacing a building and that leads to a large three-bedroom unit, if they are building extra ones, they could be smaller.

MR COE: In order to bring about a cultural shift, in effect, whereby people with families are living in apartments in Canberra, which is unfamiliar to the vast majority of people in Canberra, do you think that we have adequate public open space? Do you think that public open space is appropriately managed to support people for whom that open space is, in effect, their backyard?

Dr Ymer: You have just reminded me of the point I was going to make before when you asked the question about whether we see apartments in the area or in Canberra. Certainly, in our case we live across the road from Turner school, which has large parkland associated with it. We feel that if we lived in an apartment that would have been adequate to meet our needs in that area.

Certainly, it is utilised by people living in apartments. They go there and play

basketball and so on on the weekend. So in our experience of our local area, that particular park is well maintained and it is utilised out of hours, which is a good thing for the school, because it is a security issue as well. The bike path across the road at Turner school has been the site for a lot of kids and parents coming into the area to utilise that facility.

In our experience, it has been well maintained and it has been a great asset to have in the area. It is one of the reasons why we stayed as long as we did in the area. Obviously our kids go to those schools. In our experience, in that case it was good. It is vital. If you are going to have apartments, you really need to have open space. I cannot remember specifically, but there are a number of studies that show that green spaces in the inner city are really important for people's health for various reasons. I can forward those to you if you like. I hope that answers your question.

MR COE: Yes, thank you.

THE CHAIR: Ms Le Couteur, did you have any more questions?

MS LE COUTEUR: No.

THE CHAIR: Unless you have something else you wanted to add, I think those are all the questions we have on this. Thank you very much for appearing before us today and also for your submission. We will get any questions that members may think of to you as quickly as possible so that you can get back to us. We will send you a copy of the *Hansard*. You can look at that to see if there is anything that you think Hansard recorded inaccurately. Thank you very much for appearing before us today.

Dr Ymer: I did actually have one further comment.

THE CHAIR: That is fine.

Dr Ymer: It is around housing affordability. Again, it is like diversity; it is a complex issue where you want to have the balance of both things. You are not going to solve it by changing one rule in the code without a whole lot of other considerations to go with it. So we do not have all the answers, but it would be preferable to have something slightly larger if we could. But I understand that it is a difficult question to address.

THE CHAIR: Thank you, Dr Ymer and Mr Tucker.

Short adjournment.

CORBELL, MR SIMON, Attorney-General, Minister for Police and Emergency Services and Minister for the Environment and Sustainable Development
PONTON, MR BEN, Acting Deputy Director-General, Planning, Environment and Sustainable Development Directorate
CALNAN, MR GARRICK, Senior Manager, Territory Plan Review and Implementation Section, Environment and Sustainable Development Directorate
FRAZER, MR BRUCE, Manager, Territory Plan and Technical Amendment Unit, Environment and Sustainable Development Directorate

THE CHAIR: Our final witnesses today are the Minister for Environment and Sustainable Development, Mr Simon Corbell MLA, and officers from the Environment and Sustainable Development Directorate. Welcome, minister and officials.

I draw your attention to the protections and obligations afforded by parliamentary privilege on the blue privilege card. I am sure you have all seen it before. Could you confirm for the record that you understand the implications of the statement?

Mr Corbell: Yes, thank you.

THE CHAIR: Thank you very much. Before we proceed to questions, minister, have you any opening remarks you would like to make?

Mr Corbell: Yes, thank you, Madam Chair, and thank you members of the committee. I will just make a couple of brief introductory comments. The government has been paying close attention to the comments that other submitters have been making in their evidence to your inquiry.

In response to a range of those comments I would like to place the following on the record: the key to this draft variation is improved solar access through subdivision design and through the design and siting of dwellings. The underlying principle is a simple one: no house will overshadow its neighbour by more than 1.8 metres on the boundary. The rules surrounding solar access can be relaxed, as some have called for, but that will only be at the expense of solar access.

DV 306 also imposes new controls on multi-unit development in the RZ2 zone. This is in direct response to community concerns about the level of redevelopment activity in this zone. Other significant initiatives are in relation to secondary residences and the dwelling replacement policy for multi-unit development in established areas. The balance of this draft variation is substantially carried over from current codes but with updates to format and wording for clarity and ease of use.

It is the case that this draft variation is a weighty document. But it is no larger or more complex than equivalent documents currently in the territory plan or documents in comparable planning jurisdictions—for example, the Brisbane city plan. DV 306 seeks to strike a balance between flexibility and certainty. It is clear from the evidence before you that commentary is quite polarized over which end of the spectrum should be favoured in this respect. This is not unusual when it comes to planning debates.

THE CHAIR: Thank you, minister. We will go straight to questions.

MS LE COUTEUR: I will go to the solar access issue first of all. I agree that it is something very much to be supported. But we have had a lot of evidence from people who obviously know planning vastly more than me along the lines that how it is proposed in 306 is leading to unnecessary duplication, that we already have a system with setbacks and building envelopes. That has not basically changed but we are adding to it the additional rules for solar access. What we are ending up with is something which they allege a small builder is just not going to understand properly, get their heads around, and that this is basically just going to push development being done largely by bigger builders who can afford to have the expertise to actually work out what on earth can be built within it.

One of the people who gave evidence from the HIA was on the national DAF committee. She felt—I hope I am paraphrasing her correctly because it was a while ago—that we should have one system or another but that what we have with this is basically two systems trying to control the built form and that it makes it unnecessarily complicated. Can you comment on that?

Mr Corbell: Yes. I think the issue is that these provisions are no more complex than other provisions that already exist in the territory plan and which building practitioners already work with.

MS LE COUTEUR: I guess the point is that none of the existing ones have been removed and changed. We have added another level on top. The existing ones are still there. Some of them have changed.

Mr Calnan: That is not correct. There are existing building envelope provisions in the current codes that were introduced back in 2003 as a result of variation 200 to the territory plan. People made the same comments then, that they would not be able to build and meet those requirements. But, as we know, building development has continued since those policies were introduced.

The new policies replace those existing building envelopes with a new set of envelopes. So we are not adding another set on top of the existing ones; we are replacing them with a new set of building envelopes that are more focused on solar access and ensuring that the neighbouring property, in particular, is protected from the potential of overshadowing. The existing provisions do that to a certain extent but not to the same level that the proposed provisions would do.

MS LE COUTEUR: My issue is not with the solar access; my issue is simply with complexity of rules.

Mr Calnan: It is a similar approach. It is just that different parameters have been applied to the solar envelope.

MS LE COUTEUR: So you think that fairly soon the industry will comprehend this from a complexity point of view? I appreciate that it makes a real difference in terms of where buildings are. As I said, that is not where my concern is.

Mr Calnan: They will need to adjust. Some designs that they are currently able to put

on blocks will not be able to be achieved. So there will need to be some adjustment.

MS LE COUTEUR: Yes. The other comment that was made—this seems a more real one—was about fences. I actually printed information from ACTPLA's website this morning and it appears to me to be fairly complicated. There are some things that disagree with each other. But it appears that you can build a fence panel or a wall no higher than 2.3 metres above natural ground level, whereas we are going to be restricting houses to 1.8 metres. A number of people made the point that if you can build fences without any approval considerably higher than houses—

MR COE: Or a garage.

MS LE COUTEUR: Or a garage—a variety of things; I just printed out the one regarding fences—that it becomes ridiculous to constrain the house and be happy to have other things providing the shading. Do you wish to comment on that? Are you planning other changes? How is this going to happen?

Mr Calnan: It is true that under the exemption provisions in the regulations it is possible to build a fence to the heights that you have quoted. I guess that is just confronting the reality of the need to provide flexibility. The reality, though, is that most people just do have either a 1.5 or 1.8-metre high fence on their boundary. You can, I guess, point to a contradiction there.

I guess one of the ways that you might consider looking at the solar envelope—the solar envelope is based on the solar fence principle. We have nominated 1.8 metres because that is the standard fence height that the majority of people build. The implications of increasing the height of the solar fence—I think some people are suggesting that—is that the neighbour will be more severely overshadowed. For every 300 millimetres that the fence is increased, the length of the shadow would increase by around about 600 millimetres.

It is a trade-off. We could say that based on the maximum height possible under the fencing provisions we could base the solar fence on, say, a 2.1 or 2.4-metre fence, but the consequence of that would be in most cases to have a much more significant overshadowing impact on the neighbour.

It is a trade-off. It is on the basis that I think government was saying to us that solar access is very important. We have to accept that, in reality, most people are going to build a fence on their boundary and that fence is going to overshadow the neighbour. So it is pointless to impose a restriction that is tighter than that. But, again, it is a trade-off. If the Assembly felt that it was too tight, then there is potential to adjust it, but the consequence is greater overshadowing of the neighbour.

MS LE COUTEUR: I guess where I am going is that it seems illogical to restrict the house but allow a fence to be built which is higher than that or potentially you could put a small shed up—

MR COE: A class 10 structure they call that.

MS LE COUTEUR: For those of us who are not planning experts, it is a shed.

Mr Corbell: Clearly, the issue here is what structures can be built with and without approval. That is the question that you are essentially raising.

MS LE COUTEUR: Yes, and that they should be consistent with this.

Mr Corbell: Planning regulations have to operate in the context of what are reasonable and what are unreasonable impositions on what people do in their backyards. I do not think any of us would advocate a return to the requirement where you needed development approval to build a garden shed or even a small garage which, of course, used to be the case and which was overly onerous and unreasonable. Our planners, the government's planners, have to work in that context, but at the conclusion of this debate the fundamental question will be: do we want provisions which provide and guarantee better solar access for dwellings?

There is no perfect formula for achieving this. There is no formula that is going to satisfy every single stakeholder, nor is there a formula which is not without some compromise. But is it the wish of the Assembly to provide better guarantees around solar access or not? That is the key question the committee will need to answer in its report, I submit, and which the Assembly will have to consider as well. At the end of the day, that is what a substantive part of this variation is trying to achieve.

MR COE: Minister, a number of witnesses have said that it does not seem like a comprehensive review was undertaken of the previous rules and regulations in this space. Did ACTPLA undertake a thorough review? If so, is that publicly available?

Mr Calnan: I think it was as thorough as we have been able to do. I guess that other people might have a different opinion. But this process has been going on for the best part of four years now, initially with variations 301 and 303. We established the reference panel. We have had the benefit of numerous comments and submissions on the proposals to consider. I do not know what more we could do really. But others may have a different opinion.

Mr Corbell: Critiques around process are really critiques about the proposed policy outcome—ie, people are unhappy with elements of the policy outcome and, therefore, can resort to critique of process. But fundamentally, as Mr Calnan has said, this has been an exhaustive process. There are two proposed territory plan variations that precede this one which have come about as result of exhaustive policy work and review of existing provisions and how those provisions could be updated and improved.

If someone is saying that there is not a document that says "review", okay, no, there is not. But there is a whole series of papers, documents, meetings, consultative forums and policy work within the directorate which have resulted in this draft variation. That is the function of bringing this draft variation to the committee today. I do not think anyone can suggest that there has not been an extensive process of engagement.

Two reference panels have been established, one an industry one and the other a community one. They had representatives of industry bodies, professional associations, community organisations, residents' groups and so on who have actually

fed into what they wanted to see in this new variation after my predecessor said that 301 and 303 would be withdrawn. So the suggestion that there has not been an extensive process of review is, I think, wrong.

MR COE: Your response is all a step ahead of what I was actually asking about. I was asking about what was wrong with the previous system which warranted this seemingly massive change? We have had a lot of interest from peak bodies in the ACT that are saying that this is going to have a huge impact on our industry, our profession and our lives. What was wrong with the previous system which brought about this need for a change? Was there a thorough review done which said, "We need to instigate a massive change"?

Mr Corbell: We know that the outcomes in terms of the delivery of new dwellings were not having sufficient regard to providing for effective solar access, particularly when it comes to solar access provisions. DV 306 does not just deal with solar access provisions. It deals with it in large part, but it also deals with other issues around RZ2 and so on which we have previously discussed. But in relation to solar access, there was a clear view, amongst a majority at least—I am not quite sure what the Liberal Party's view is—of the Assembly that guarantees around provision of solar access in new estates in particular needed to be improved. So this is a direct response to that.

MR COE: Usually when a massive change is proposed to anything the proponent advocates or describes what is wrong with the current system and then spells out how the proposal is going to address that issue. Just about all our witnesses have said that it seems no comprehensive review was undertaken. If you have all these different organisations saying that, are we right as a committee to think there might be truth in that?

Mr Corbell: No, you are not. I think they are two separate issues. The question about whether or not there is a problem and the question of whether or not there has been a review are two separate questions. I have addressed the issue of review and I have explained to you what the process has been in terms of policy development to get to this point.

But in relation to what is the problem we are seeking to address, you have got it in your submissions. Your submissions are telling you that there are a broad range of stakeholders who are concerned about the level of redevelopment activity in RZ2 and how it should be managed. You have also got submissions before you that talk about people's concern about the quality of new residential estates and the crowded nature of those estates and how that has an impact on people's access to private open space and to good levels of solar radiation to keep their houses warm in winter and cool in summer.

Those submissions are before you now. These are not new issues. This draft variation is seeking to respond to those issues, recognising that this is a contentious and contested question. As I indicated in my opening comments, there is a polarisation of view between those who advocate no change to the current provisions, or much more limited change. Generally speaking, the groups that adopt that approach are those who are building homes now.

I would submit that the housing sector is overwhelmingly a conservative industry which is reluctant to change practice that it is already used to or finds it difficult to adapt to change. That is no criticism of the intent of those in the industry; that is the nature of the industry. It is a conservative industry that is reluctant to change its practices and that is why regulatory responses are needed.

At the other end, there are community organisations and residents' organisations who feel that these changes still allow too much flexibility for industry. That is the polarized nature of this debate, and I am sure that you now appreciate, having sat on this committee for four years, that there are no easy answers between those two polarised extremes.

The responsibility of the government, the committee and the Assembly is to try and chart a path that seeks to address the legitimate grievances of both of those extremes but, nevertheless, find a middle course which improves the quality of the built environment in the territory. That is what this draft variation is trying to do.

MR COE: I think your description of the fact that it is a contentious issue highlights the fact that you need to clearly articulate what the problem is, how you are going to address it and what the impact of those proposed changes is going to be. I wonder whether, minister, you did fully comprehend the impact of DV 306 and the true regulatory impact it is going to have on the industry and on built form in general. A lot of evidence has been presented by people who work in this space who are showing examples of what are either unintended consequences of DV 306 or, worse still, known consequences. I do not know how you could see it as being desirable. The question is: do you think you fully comprehended the impacts of DV 306 on built form?

Mr Corbell: To the greatest extent possible, yes. But this is an iterative process that involves review by your committee, which involves, ultimately, the approval—

MR COE: There is interim effect; so it is not quite iterative.

THE CHAIR: Mr Coe, do not interrupt the minister, please.

Mr Corbell: On the question of interim effect, unless you are suggesting the draft variation should not have interim effect and the consequences that flow from that in terms of speculation in the property market in particular, then I will leave that to you. But setting that to one side, this is an iterative process that, under statute, requires review by your committee—well, enables, I should say, review by your committee—and ultimately requires the consent of the Assembly to any change. That is the mechanism within which we work.

Mr Calnan: Could I just add to that?

Mr Corbell: Yes.

Mr Calnan: What has been demonstrated by some interest groups is that there are certain developments that can be built now that will not be able to be built. Now, you can describe those as unintended consequences, but that is not the way we see it. The

intention of these proposed policies is to provide greater solar protection to neighbouring properties. It is clear that some developments that can be permitted now would not be able to be permitted in the future. As I said, some people see those as unintended consequences, but we see it as a clear outcome of what this is all about.

Mr Corbell: This is about reform. There are too many dwellings being built in this city still that do not meet what should be a reasonable standard of providing good solar access for people to live in them. I do not want people who live in new homes having invested considerable amounts of money and taken on considerable levels of debt to live in homes that still require an overwhelming reliance on mechanical heating and cooling. There needs to be a shift away from that. This is what this draft variation is all about.

People are concerned about the costs of their electricity bills and their gas bills. This is a direct response to that question. It is about saying to industry, "You must build homes which have less reliance on mechanical heating and cooling." Householders cannot afford it, and for the amount of money they are paying, they deserve a better quality product.

MR COE: We had numerous witnesses say that if that is the intended outcome, why do you not just do it on whether a building meets six stars or seven stars, or whatever the star rating may be, because there are—

Mr Corbell: The rating system—

MR COE: Excuse me, minister—other ways of establishing energy efficiencies other than simply north facing. To be consistent with what you have said, if the attitude or the direction of the government is to try and reduce electricity and gas bills, surely you go down another approach whereby you would put in a minimum number of stars.

Mr Corbell: Industry is on the record as opposing increases in star ratings for dwellings. The HIA and the MBA are both on the record opposing previous reforms to lift the star rating of dwellings. I take those comments in that context.

Mr Calnan: I add that if a person goes to the trouble of designing a house to meet a six-star energy rating and then the current provisions allow their neighbour to build a house which then overshadows them and takes away the access to sunshine that they have designed their house to achieve, that is a pretty unfortunate situation. These provisions are designed to stop that and to ensure that if you do the right thing, your access to sunshine will be protected.

MR COE: If the government is suddenly going to be price conscious, do you accept the view put by some witnesses that these changes will drive up the cost of property?

Mr Corbell: That claim is frequently made by industry. It is frequently not demonstrated in practice.

MS LE COUTEUR: I was going to go to the same place. I assume that you have seen the architects' evidence which was done by Purdon and Moss. They went through a worked example and they came to the conclusion that the intention of the

RZ2 changes was to reduce the number of dwellings. They said that, given that reduction of dwellings, the dwellings that were constructed would be larger. You can argue whether that is good or bad. Our previous witness would have argued it was good. But one thing that seems fairly clear is that they would be more expensive.

How do these changes advance housing affordability and also diversity in the RZ2 areas? I think there is universal agreement that people would like to see the RZ2 areas back to somewhere so that people who want to downsize but stay within their existing area can do so. But that can only work if the buildings there are affordable. By that, the least you could say is that they are the same sort of price as the house that people have sold. But the evidence, particularly of the architects—particularly Purdon and Moss—is that the changes you have put in will lead to more expensive dwellings in RZ2.

Mr Corbell: This is a trade-off. Let us start with why these changes are being proposed. They are being proposed because people are concerned about how many dwellings are being permitted on blocks in RZ2. Some of the key high profile planning disputes which have highlighted this issue, such as Marsden Street in Dickson or some sites, for example, in Chifley and Lyons, have been fundamentally about the number of dwellings permitted on the block. In direct response we are reducing the number of dwellings permitted on the block—on the amalgamated block—in RZ2. There is then the question of how big should those dwellings be permitted to be? I think you would find a diversity of view around what is desirable in that respect.

MS LE COUTEUR: Absolutely.

Mr Corbell: There are many people in RZ2 who would be comfortable with a smaller number of larger dwellings than a larger number of smaller dwellings. I do not think there are any easy answers in this respect. Affordability of dwellings is not solely a function of size. Size is a factor, but this is essentially an issue around private redevelopment activity where developers will respond to meet market needs in a range of ways and provide a range of products.

I would say that there is nothing that stops developers from building affordable product if they perceive there is a market for that. But, equally, there is nothing in these provisions that prevents larger and more expensive dwellings being built as well. But that is the necessary flexibility that is needed in a planning system to allow industry to respond to market demand.

The only other response is to say that dwellings will only be of a certain size and will be smaller than perhaps what more upmarket product will be. But then basically you are saying that this size is only for affordable housing and it is not for other housing types. That may be an unreasonable policy response.

MS LE COUTEUR: I agree that there is not an easy answer for affordability in terms of redevelopment.

Mr Corbell: I think affordability can be engaged through a range of other policy levers. The government has outlined a very comprehensive suite of policy levers to try

and drive improvements in affordability of dwellings, mandating percentages so that, for example, in new subdivisions there is a mandated percentage of dwellings that must meet certain price points. We can do that through our control of land sale. Obviously, we also have other mechanisms, such as OwnPlace, the delivery of more community housing and so on. They can all improve the affordability quotient. So I do not think it is solely a function of statutory land use controls to improve affordability.

MS LE COUTEUR: Clearly not, but is there anything in this that would improve affordability so far as the existing areas of Canberra are concerned? Most of what you have been saying will have its major impact on new development. OwnPlace, so far as I know, is entirely new development. Land rent is entirely new development.

Mr Corbell: Yes.

MS LE COUTEUR: For people who would like to stay in the areas that they are currently in, the redevelopment areas, is there anything that can be done there? I do not know the answer.

Mr Corbell: In relation to RZ2, I think the simple point should be made that multi-unit development in RZ2 is going to offer products that can be cheaper than single dwellings that currently exist in RZ2.

MS LE COUTEUR: The example the architects gave was that you ended up with a product that was just as expensive—

Mr Corbell: That can happen too. This is a function of market activity. The government does not prescribe a level of affordable product in private redevelopment projects—that is, redevelopment of existing leased land. We do in relation to new sites because we have greater policy levers in that respect. But when it comes to the private market it is a much more difficult proposition.

Mr Calnan: My reading of Christine Purdon and Rodney Moss's evidence indicated that they were suggesting we should just move back to a building envelope and not a restriction on the number of dwellings.

MS LE COUTEUR: Yes.

Mr Calnan: And, by the way, we should allow apartments as well. The consequence of that would be to allow even more dwellings on blocks in RZ2 redevelopments than what is currently permitted. That is the end outcome. I guess they are suggesting that because you can put more dwellings on the block and they would be smaller they would be cheaper and, therefore, more affordable.

MS LE COUTEUR: Yes, that is the logic.

Mr Calnan: That is where the two arguments come into conflict. We are responding to concerns in the community that the types of redevelopments that were occurring under the existing provisions were not leading to outcomes that were acceptable within those communities. We can go back to the existing provisions or we can make

the provisions even more flexible, but that is not addressing the issue that we are seeking to address.

Mr Corbell: In addressing issues of affordability, RZ2 should not be viewed in isolation from the other zoning that exists in the city. RZ3 and 4 also make provision for higher density and, therefore, smaller dwellings that can be providing more of that product. So we should not view RZ2 in isolation from the broader operation of the zoning system and the higher densities that are permitted in other locations, often in close proximity to RZ2 locations that permit higher density.

RZ2 is a zone for a particular purpose. It is a transition zone, if you like, between single dwelling, low rise residential and higher density residential uses in RZ3 and 4, and it is designed to provide that space in between those two zoning types where some change occurs but not of the magnitude and order and scale that exists in RZ3 and 4. I do not think you can view RZ2 in isolation from the other zones and the functions that they also deliver in terms of affordability.

MS LE COUTEUR: Talking, again, about affordability, currently we have plot ratios in RZ1 for single dwellings of 50 per cent, but if you put a dual occupancy in, which you may be able to, you would go down to 35 per cent. Why are we supporting larger single residences? What positive public policy comes from that?

Mr Calnan: The plot ratio provisions relating to dual occupancy were introduced through variation 200. They were attempting to address concerns around that particular type of development. The plot ratio control that was introduced in relation to single dwellings was in response to concerns that there was not any limit on the size of them.

It is true that with plot ratio we need to provide a reasonable amount of flexibility for a landowner to build a house that meets their requirements. So plot ratio is really a restriction on the size of the house you can build. It is a question of what is reasonable. I guess the issue is that we are trying to deal with a range of different block sizes. Some people have suggested that a sliding scale plot ratio might be more appropriate, and I think there are arguments that you could make to support that. But it introduces another layer of complexity, and it is balancing that. We have found that for blocks above 500 square metres that that figure works reasonably well, but, yes, there are cases where it does not work particularly effectively.

MS LE COUTEUR: I think this was a question that I asked last time and you were not sure of the answer, but maybe you are now. Secondary dwellings, are they going to require a lease variation charge?

Mr Ponton: As I mentioned at the last hearing, secondary residences cannot be unit titled, so, therefore, there is no need to vary the lease. In most circumstances secondary residences occur in older areas where the lease provides for residential purposes. Again, just in terms of having the secondary residence, there is no need to vary the lease. The only time that you would need to seek to vary the lease is if the lease specifically mentioned a single residence. If that were the case, there may be a need for a lease variation charge. But, again, as I said, we have not yet put our position to government as to whether or not they would like to utilise the provisions in

the act for omission of it. But it is an issue we are alert to and we are doing some thinking around that.

THE CHAIR: One of the questions that members of the community are concerned about particularly—and you alluded to this, minister, in your opening remarks—is the desired character. After the consultation phase, the statement of desired character was changed to include any statement of desired character in the relevant precinct code. Could you talk us through why that decision was made and what impact it will have if a precinct code does not mention "desired character"? You would, of course, be aware of some disquiet about neighbourhood plans not being mentioned anymore.

Mr Corbell: Yes. I will ask Mr Calnan to talk about the operation of the "desired character" definition. But in relation to the question of neighbourhood plans, as you would be aware, neighbourhood plans were developed in the context where they did not have any statutory effect. The Administrative and Civil Appeals Tribunal when looking at a number of disputes where the application on a neighbourhood plan has been raised as a relevant consideration has concluded quite clearly that neighbourhood plans are unable to be used in assessing whether or not a development proposal is consistent with the provisions of the territory plan because they do not have statutory effect. Therefore, the position of the government and of the Planning and Land Authority has been to ensure that, where relevant, provisions of neighbourhood plans are incorporated into precinct codes where they exist for certain parts of the city.

For example, there are precinct codes in place for a range of centres around the city. A good example is Kingston where desired character reflected through a master planning process and identified through a master planning process is now reflected in statutory controls in a precinct code. Similar work is occurring now at Dickson and at a range of other sites across the territory. Residents, I think, would welcome the fact that there is clarity around what characteristics are given statutory recognition in a precinct code.

I appreciate that some residents would like to see a broader range of matters included in existing neighbourhood plans incorporated into precinct codes, and those are matters which the government keeps under close review and seeks to incorporate wherever appropriate. Some comments and some of the outcomes of the neighbourhood plans are so general in nature—sometimes—that it is difficult to have them reflected specifically in the precinct codes. We have to have close regard to what does and does not go into a precinct code.

In relation to the operation of the "desired character" definition, I will ask Mr Calnan if he can assist.

Mr Calnan: The draft variation proposes an amendment to the definition of "desired character". The latest version of it does. It makes reference to the potential for statements of desired character to be incorporated within a precinct code. If there is no such statement, the desired character would be determined by the objectives for the particular zone within which the development was located.

If you go to the zone objectives, for instance, within the RZ2 zone, it talks about part of the desired character being to retain the existing pattern of subdivision. The

policies associated with that ensure that that objective is met. In considering a proposed development, it would need to demonstrate that it met that objective as well. That is essentially the difference.

What we are really setting up is the ability to do that in the future so that when we are developing new precinct codes those precinct codes could include statements of desired character, which would then be given some weight in the development assessment process. They are not there at this point in time.

MR COE: Minister, a few people told us that Forde was an example of a suburb or development that has been done well. Are you able to give any background about what was different about Forde with regard to the rules that are in place there?

Mr Corbell: Forde is, no doubt, a very good quality new suburban subdivision. It is a direct result of a decision taken by me when I was planning minister around 2004-05 that the Land Development Agency would enter into a joint venture with a large, nationally recognised land developer to lift the standard of residential estate development in Gungahlin.

As a result, the LDA entered into a joint venture with CIC in conjunction with Lend Lease—I think they were the developer. Anyway, it was a large national land development company. What has occurred at Forde as a result is that they have developed an integrated master plan for their estate. They have imposed, ironically, additional provisions over and above those that sit in the territory plan. It is worth highlighting, of course, that industry are concerned about additional provisions but, in the context of Forde, that is exactly what the private sector imposed on itself.

They imposed a range of conditions. They said, "Builders, if you want to build in Forde, not only do you have to meet the requirements of the territory plan, but you have to meet our own design guidelines for dwellings."

MR COE: So was a review of that done? Ms Brookfield on 18 July—she is from the HIA—said:

> 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.

Going back to what I said earlier about reviewing what work has been done, if Forde is well regarded as being a success—and you just said that you were part of the reason behind that success—why are we going backwards now? You have the same people saying that Forde was a success now saying that newer developments are failing.

Mr Corbell: I do not think we are going backwards. I think what you see is a range of estate delivery models occurring. The estate delivery model is a separate question to what the statutory planning control is. For example, at Forde the private developer, in conjunction with the public land developer, decided that they would deliver the estate as a whole. It would have particular design requirements for dwellings. In fact, I think at Forde the estate developer went so far as to say, "This is the pattern of building

plans that you can choose from." They actually said to industry: "If you want to build your own plan, forget it. These are the plans. These are the patterns of plans that we expect in the estate. So this is what corner homes will look like. This is what smaller dwellings will look like. This is what larger dwellings will look like." It was a highly mandated level of dwelling type that could be built down to the actual design. It had to be signed off by their own estate planning controller over and above the statutory process for development approval.

We are seeing a similar pattern occurring now at Googong. Googong is imposing the same sorts of controls that we have seen at Forde. We have seen a similar approach adopted at Crace. Again, that is where a single land developer is developing the entire estate and they are setting in place particular controls. Interestingly, I think it is the same developer—CIC. They are clearly seeing benefit in terms of sales and in terms of the marketability of their estates to do this.

The point I would make is that this is not the pattern adopted in relation to all estates. In other estates in other new suburbs, different parts of the suburb are developed by different developers or there is no uniform approach adopted to building design beyond that which is in the statutory planning control. Therefore, you get a greater variety of homes being built and they do not necessarily have the design coherence that estates like Forde and Crace have.

This comes down to a question not so much of planning control as to how estates are being delivered on the ground and what the delivery mechanism is. Interestingly, of course, Mr Coe, your party is opposed to the role of public land development and the ability it has to try and drive more coherent planning outcomes like we have seen at Forde and Crace. I put it to you that if you think that Forde and Crace are good outcomes, they are good outcomes because the public land development is at the table trying to coordinate a more consistent built form and a more harmonious residential environment for future residents as opposed to just cutting up estates into smaller parcels and selling them off to different land developers who each do their own thing and bring no coherent whole.

MR COE: Moving on from your B-grade verballing of the Liberal Party—

Mr Coe: Well, I am sorry, it is not verballing. Your leader is on the public record as opposing public sector land development.

MR COE: Page 228 of the transcript has Mr Fogg from the HIA talking about the consultation. He says:

> 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.

He goes on to say:

> At the end of the day, this was not consultation by committee; this was decisions made from above.

Do you accept that the consultation with industry was substandard?

Mr Corbell: No. That is Mr Fogg's view. He is entitled to his view.

MR COE: We have had numerous people say that the consultation was substandard. Have you not learnt any lessons from this process?

Mr Corbell: It goes beyond credibility to suggest there has not been an extensive consultation process in relation to this draft variation. I think—

MR COE: It is one of—

THE CHAIR: Mr Coe, do not interrupt the minister.

Mr Corbell: If I could answer the question. My directorate has outlined extensively the consultation exercise that has been gone through: repeated and detailed and lengthy meetings between residents' groups, community organisations, industry bodies, professional associations; lengthy discussions, presentations, feedback sessions on the issues at play; a very lengthy and detailed process of public submissions; and a statutory requirement for my officials to respond in detail to the issues raised in those submissions. You cannot suggest that there has not been consultation.

As I pointed out earlier, when people are unhappy with the proposed policy direction they will, at times, resort to critiques of process rather than critiques of the policy questions at play. I do not think it is helpful to progressing what is a difficult and complex policy question to simply resort to critiques of process as a proxy for what is the real issue—that is, unhappiness with the proposed policy direction. Let us have the substantive debate about the proposed policy.

MR COE: A lot of people are unhappy with both the consultation and the proposed policy direction. In fact, some people said it is not clear what the policy direction is, especially in RZ2. Sometimes the government says "Let's reduce the number of apartments around core areas," yet in other government policies they are saying, "We need to build up the density around core areas."

Going to solar access, a few witnesses told us that there is a risk that, whilst there may well be equality in solar access, the overall solar access for each household could, in fact, be worse than what would otherwise be the case. An architect said that, 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. Is this something that ACTPLA is aware of, and is it something that was intended?

Mr Frazer: Shadows are fixed, so what some are advocating is that, "Yes, I can

reduce the amount of so-called lost space on the southern side of my house that is in shadow by moving my house further towards the southern boundary." But all that does is move the shadow on to the neighbour's block. So it is just a question of how much shadow can be tolerated on the neighbour's block, hence, the solar fence.

MR COE: We saw a couple of diagrams whereby the impact of that was that everybody in a section may well move their houses in the same direction so that seemingly everybody is worse off. There might be equality, but everybody is worse off. That was a layout that we saw.

Mr Frazer: Yes, and I am sure there will be a number of designs that could counter that argument. It is possible to have buildings on the northern side but still have adequate sunlit private open space and adequate access to living room windows all on the northern side, even if part of the house has to be right on the northern boundary, in the worst case. It is a question of design, in my view, as to how the possibilities that a solar fence allows can be properly put into place on an individual block to maximise the amount of enjoyment of solar access.

MR COE: So these are more prescriptive rules. Are they going to tarnish streetscapes? One witness said at page 88:

> So we are pushing two-storey elements much further toward the northern side of the block. And you get a row of houses like that and we are going to end up with the situation where we are trying to control garages, and they are discouraging garages from dominating the streetscape. What we will end up with is repeat housing dominating the streetscape.

Is that something that is likely to happen because we are being as prescriptive as we are in DV 306?

Mr Frazer: I dispute that. Again, it is essentially a matter of design. The side boundary setbacks are not changed. The building height is not changed. Largely, the building envelope is not changed. The reference there to pushing two-storey development to the rear of the block will not affect streetscape. It is true that the upper level—side and rear boundary setback—has been relaxed from nine metres to six metres for walls with windows. That is consistent with other privacy requirements throughout the territory plan.

That will not affect the streetscape in itself because that provision does not come into force until a point about 18 metres from the front of the block has been reached. That provision currently only applies to the rear zone, which, as I said, commences at about 18 metres from the front boundary. The streetscape, of course, as per the definition, is what is in the street—the street furniture, the street trees, the various other components of the street and the front facades of the buildings on each side of the street. That is the definition of "streetscape", and that is the one we work to.

MS LE COUTEUR: This is one I should have asked before about plot ratios. We were shown a number of pictures of houses which, looking at them, would appear to be substantially greater than a 50 per cent plot ratio. I am also aware of some that I have seen which it is impossible to believe could possibly be 50 per cent. It was suggested that some of these have an internal atrium in order to manage to meet the

plot ratio, but there is an issue of bulk and scale from the neighbour's point of view. Would that seem to you to be reasonably possible that that is what happened? Certainly the photos we saw made it fairly hard to believe that it was 50 per cent.

Mr Ponton: Ms Le Couteur, plot ratio, as you would be aware, is an equation that includes gross floor area, and gross floor area is only counted once. So if you essentially have a void, the void is only counted once and not on both floors. That could have an impact in terms of the bulk and scale of the building. So it is certainly possible. I am only aware of very few homes that might otherwise have exceeded a plot ratio if the void had not been there, but they tend to be relatively minor. In terms of overall bulk and scale of the building, I do not think it has a great impact.

MS LE COUTEUR: We have had a discussion with a number of people about the style of the variation and that basically it is getting down to entirely rules and criteria. There are people who feel this is not the right way to go. The architects use the word "intent". Ms Porter has been talking about some of the residents talking about "desirable character". Whatever words you use, we are talking about something which is other than a numeric measurement that you must be 10 metres from here or whatever. Do you think it is fair commentary that we seem to have removed our objectives from anything which will actually be implemented in terms of the territory plan?

Mr Corbell: No, I do not think it is. You asked questions earlier today about operation of desired character and so on which do provide and require some subjective judgments to be made about response to particular issues. But we operate in a system where planning decisions are subject to some level of disputation and review by independent judicial tribunals and potentially even the courts. It is necessary for there to be some clear rules around which assessment occurs, and we seek to provide a planning document that has both qualitative and quantitative criteria that are used in assessing a development proposal.

This is an age-old debate, and it would be the case that the professions argue for more qualitative than quantitative measures. Alternatively, industry waxes and wanes between clear, definitive rules and flexibility. So this is an age-old question. I think the draft variation seeks to strike a reasonable balance on these questions.

Mr Calnan: It is fair to say that performance-based planning codes are really the general standard in most jurisdictions now. They have been progressively introduced over the last 20 years. I think the ACT was one of the leaders. The terminology has changed. In the past instead of "rules" we have referred to things like "acceptable solutions" or "mandatory requirements", "performance criteria" versus "criteria" versus "intent". Different terminology has been used to describe the different elements of the provisions. But, in large part, they play a similar role.

The thing that has changed is that some of the codes have an additional layer of intent statements. I think the criticism has been that there was no clear role for those under the statutory arrangements under which we work, therefore, there was some uncertainty around what status they had.

What we have tried to do in this document is, where those intent statements had

relevance to the criteria, we have drawn them into the criteria. In that way, they have a clear statutory role.

MS LE COUTEUR: You are not looking at bringing back any more generalised intent statements which might allow innovation so people were able to say, "Well, this is what we're trying to do here and we can do it this way"?

Mr Calnan: The majority of rules have performance criteria, or criteria associated with them, which are essentially statements of performance. As you are aware, there has been debate around how those provisions are worded, whether they allow too much discretion or not enough. As the minister mentioned, that is an age-old debate with development control systems.

As part of this review we have looked at all of the rules, and wherever we thought it was appropriate to include a criterion we have done so. There are certain cases where we think it is just going to lead to expensive debates. For instance, if you have a criterion around how much development you can get on a particular block as opposed to how it is designed, people will always be pushing the boundaries. So, for instance, if you had a criterion around plot ratio and a criterion around the number of dwellings that are permissible in the RZ2 provisions, we would always be in the tribunal debating what those criteria meant.

We have tried to provide for flexibility where we think it is appropriate, but there are certain instances where we think it is just better for the operation of the system to be quite clear about what the requirements are.

MR COE: Minister, a few people have said that the market for dual occupancies in Canberra is virtually dead. Is that so? And is that an intention of the government? If not, what are you doing to address that, if it is a concern?

Mr Corbell: The outcome in relation to what has occurred with dual occupancies is a function of the policy settings the government has put in place over a period of years. It is worth highlighting that about 10 years ago the type of development that caused greatest concern in the community was dual occupancy development. A decade ago it was the hottest issue when it came to redevelopment of suburbs.

The concerns that were raised then are still valid today. Dual occupancy development and the unit titling of those developments—which was the normal pattern of development about a decade ago—basically meant that it was much more difficult to provide for higher and better use of that land in the foreseeable future. It meant that we were locking in a pattern of development which potentially precluded land being used to higher use and more efficient use in the appropriate locations—for example, close to public transport corridors or around centres—instead of providing for higher forms of redevelopment, such as RZ2 or RZ3, which are now placed in the territory plan.

We were locking in a lower pattern of density which was just in the wrong place. The government has taken the view that, in large part in suburbs, dual occupancy should not be permitted because it was resulting in a change to the urban character which residents were deeply concerned about. It was having impacts such as very large areas

of hard standing, virtually no permeable surfaces on blocks in the suburban area. It was having the potential to contribute to heat island effects, loss of vegetation, loss of tree cover in the residential environment. So we said for large parts of the residential suburbs that dual occupancies are no longer permitted. That was a result of DV 200. DV 200 restricted where dual occupancy could occur.

Equally, what we also said was that there should be provision for higher density in appropriate locations. That has been reflected in the new zones around RZ2, 3 and 4, which have protected large amounts of the suburban environment from redevelopment activity. It is important to remember that only about 10 years ago redevelopment activity could occur in a far larger number of areas in the territory than could occur today in the harder suburban environments. We are not just talking about dual occupancy; we are talking about multi-unit redevelop and block amalgamation in the heart of our residential suburbs.

Labor has changed that. Labor has said, "We're not going to accept that in our residential areas, but we are going to accept change in a more coordinated manner and in a more targeted manner where it makes sense to do that." That is what RZ2, 3 and 4 are all about.

Have the government's policies had an impact on dual occupancy development? Yes, they have. Why has that occurred? It has occurred in response to the community concern at the time about the nature of that redevelopment.

MR COE: I think there would be a lot of people, especially in RZ2 areas, that would much rather a dual occupancy next door than a block amalgamation, which has led to 10, 12, 14 units being built. I can certainly think of some in my electorate of Ginninderra. Have government levers pretty much only made available large developments in RZ2 rather than smaller ones which might be deemed by many to be more tasteful?

Mr Corbell: No, because dual occupancy development is permitted in RZ2.

MR COE: Then why are we getting people saying that the industry is dead and it is no longer feasible?

Mr Corbell: I think that is more commentary around the lease variation charge and the fact that, in unit titling, a dual occupancy development—which, of course, is what occurs for a more speculative redevelopment activity where the sites are offered as two separately titled dwelling—people are concerned about having to pay lease variation charge. But people should be paying lease variation charges. They are varying the lease to create two homes where previously only one home could exist. That is an uplift in value granted by the taxpayer and through its planning approval. The uplift in value should be captured.

MR COE: Does that mean that the lease variation charge has created an environment where you get economies of scale only by building large developments in RZ2 areas? Is that the only way you can get around the new regime?

Mr Corbell: Sorry, I did not quite follow the question.

MR COE: With the new regime regarding lease variation charge, does that mean that the only way a builder can get around the economies is by building large RZ2 developments as opposed to small ones? Was that an intended consequence of the variation charge?

Mr Corbell: I doubt it. I doubt you could mount the argument that it is cheaper to build six dwellings than it is to build an extra one dwelling.

MR COE: Well, we have actually seen evidence from a couple of witnesses who have said that you do get economies of scale by building larger developments—

Mr Corbell: I have got no doubt there are economies of scale.

MR COE: You just said there were not.

Mr Corbell: No, what I said was I doubt that it is cheaper to build six dwellings than it is to build one dwelling.

Mr Calnan: It really depends on the context. Some developers have access to one block and if the characteristics of that block facilitate dual occupancy, then that might be an appropriate development outcome. But in some cases the blocks are not large enough for dual occupancy and, therefore, the only way they can do a redevelopment is to amalgamate blocks. In those cases they typically will go for a multi-unit-type outcome. But it really will depend on the circumstances. What we see is different approaches in different circumstances.

MS LE COUTEUR: Minister, you raised a discussion about the negatives of dual occupancy development.

Mr Corbell: Yes.

MS LE COUTEUR: It struck me as I was listening to that that virtually all of that would apply also to redevelopment of large single residences. You are locking in the land use for the next 50 years, you are covering most of the block with hard standing.

Mr Corbell: Yes.

MS LE COUTEUR: Why is the government's policy favouring that sort of development?

Mr Corbell: Again, it comes down to where development should take place. What you have to remember is that the response around dual occupancy development through variation 200 was a response to a circumstance where the planning rules at that time said, "Well, so long as your block is of a certain size, you can build dual occupancy. It doesn't matter where the block is. It doesn't matter what the land might most suitably be used for in the future. As long as your block is of a certain size, you can build a dual occupancy and you can unit title it."

So this was an ad hoc pattern of redevelopment right across the suburban setting.

There was no restriction about where it could or could not occur. It was just if your block is bigger than X number of square metres. That is the only control. So the government said at the time, "That's not acceptable. There has to be a more targeted focus around redevelopment activity than that." So we took the decision that very large parts of the suburban environment would not be able to be subject to block amalgamation or separate titling with dual occupancy and that it could only occur in locations that were more sensible for it to occur. So that is why we have created these zones that are now RZ2, 3 and 4.

We said that higher densities are appropriate in certain locations. And the nature of the density will vary depending on those locations. So that is why we have RZ4 and RZ3, which are right next to larger shopping centres, right next to major public transport corridors and so on. And that is why we now have RZ2, which is close to local shops and not further away in the suburban environment. That is why we have made these more targeted zoning decisions.

So what I would say in response to your question is that RZ2 is the right location for dual occupancy and more modest redevelopment activity, not wherever you want to do it, which was the situation we inherited when we came to government.

MR COE: We had evidence from a couple of people who said that it would be better if the secondary residences had been increased to 90 square metres rather than 75 square metres. Is that something that the government agrees with?

Mr Corbell: I note that is evidence to your committee, and the government will need to have regard to the conclusions the committee reaches on that and all the other evidence it has received. I am not in a position to give you a government position on a matter that the committee is yet to reach a view on and report to the government on.

MR COE: You have given us plenty of other opinions today—

Mr Corbell: I have simply been quite upfront with you, Mr Coe. It is not a matter the government has considered any further at this point.

THE CHAIR: Thank you. We will draw that to a close, it being 12.30. Thank you very much, minister.

Mr Corbell: Thank you, Madam Chair. Just in conclusion, can I say to the committee that, whilst the questions are complex and the matters under deliberation varied, at the end of the day, it comes down to a very simple proposition: if you want better solar access. If you want modest density in the RZ2 zone which does not change the character of the existing suburban environment, this variation should be supported. That, at the end of the day, is the question before the committee.

THE CHAIR: Thank you, minister. I thank you very much for appearing before us today and your officials. Thank you for your time. You will get a copy of the *Hansard* and you will be able to respond to that if you think there are any inaccuracies in that. Any other questions that the committee has we will get to you as soon as possible. The hearing is now adjourned.

The committee adjourned at 12.29 pm.