LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, ENVIRONMENT AND TERRITORY AND MUNICIPAL SERVICES

(Reference: Planning and Development (Project Facilitation) Amendment Bill 2014)

Members:

MR M GENTLEMAN (Chair)
MR A COE (Deputy Chair)
DR C BOURKE
MR A WALL

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 24 APRIL 2014

Secretary to the committee:
Ms M Morrison (Ph: 620 50136)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 11.17 am.

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

THE CHAIR: Good morning everyone and welcome to this public hearing of the Standing Committee on Planning, Environment and Territory and Municipal Services inquiry into the Planning and Development (Project Facilitation) Amendment Bill 2014. The bill was referred to the committee by the Legislative Assembly on 8 April for inquiry and report by 6 May this year.

The committee will be hearing from a number of witnesses today. This hearing is scheduled to conclude at 5 pm this afternoon. On behalf of the committee, I would like to welcome our first witnesses this morning, Mr Hamish Sinclair and Mr Viv Straw from the ACT Division of the Planning Institute of Australia. May I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table. Could you please confirm for the record that you understand the privilege implications of the statement?

Mr Straw: I do.

Mr Sinclair: I do.

THE CHAIR: Thank you. I remind witnesses that the proceedings are being recorded by Hansard for transcription purposes, webstreamed and broadcast live. Before we go to any questions from the committee, would you like to make an opening statement?

Mr Straw: First of all, thank you very much for the opportunity to appear before the committee this morning. We do apologise that our submission has not been received by you yet but I am assured that you will have that in a short time. I am Vivian Straw, the President of the ACT Planning Institute and I am with Hamish Sinclair, who is one of our national directors and past local president. We would each like to make a short opening statement about our position in regard to the bill that is before you.

THE CHAIR: Yes, certainly.

Mr Straw: Then, obviously, we would be more than happy to take any questions. I think to start with, it is an overarching sort of statement that people unite over issues and divide over solutions. We agree I think that there is a need for some change. We agree in our submission that there are some major issues that face the ACT government in the not-too-distant future. Land development is a major contributor to the budget and land is becoming increasingly scarce.

We also agree that there need to be some significant changes in the way that Canberra is currently developed, that there is a need to facilitate a number of major projects and that the current planning framework is perhaps a little cumbersome and needs some revision. What we do not agree on—I will get to these things a little bit more—overall is that basically this is the instrument to do that. We believe that other processes would be more appropriate.

We agree that there needs to be more certainty in the post-strategic planning process but that the opportunity for consultation and for strategic thinking should happen up-front, that consultation should happen up-front much more than it does and that as people get to the finer points of planning, there needs to be increased certainty over the planning process. We agree that that is probably an objective of this bill but we do not believe that it has been achieved.

There is concern among professional planners that proposed rules pertaining to special precincts and projects of major significance could be over-applied by government in efforts to meet financial and service delivery goals over time. We are concerned that government departments should respect and follow the development process and comply with the need to obtain variations prior to lodging development applications, as any other developer should. We are concerned that this bill potentially damages or overrides that process.

We were just talking about other examples—other acts, other processes—that you could think about. We think it is a bit like the tax system. Under the tax system, tax avoidance is legal but tax evasion is illegal. If you want to draw a simile, we think that this is moving from the avoidance process into an evasion process. We are very concerned about that. To describe it a little differently, tax avoidance is the legitimate process of being able to spend money on things in the business and reduce your profits and therefore reduce your tax. Tax evasion is not paying the tax that is due.

We think that there are some parts of this process that have come out of perhaps a desire, either by government departments or by others, to try to evade what we see as statutory and legal processes in the ACT that really need to be followed carefully. We are referring there to the current health project that is outlined in the act. We actually believe that that is an attempt at evading the system rather than going through the process properly. We will leave that where it is.

The ACT division is further concerned that the call-in powers should not be expanded beyond the purview of an individual minister. We believe that considering these decisions in cabinet could potentially lack transparency, invite undue influence from internal development interests, both private and public, and we believe that the call-in powers should remain with the minister.

We also believe that under the Hawke review, which has been implemented over the last couple of years, there have been some significant and very good changes to the structure of the government. But we believe that there has been very little regard to the role of municipal government, and municipal government is different to state and federal government in many ways in that it requires a certain level of coordination between the statutory side of things and the development side of things. We think that needs to be perhaps rethought.

We recognise that the planning process is complex. As complex as it may seem to outsiders, it has three very significant stages. The first stage is the recognition or identification of suitable land and suitable projects and how they should go together. The second process is to do with the zoning of land to an appropriate zoning and the third process involves the lodgement of development applications. To simplify and bring certainty to the system, it is necessary that strategic matters are dealt with

between the identification and zoning process where there is the largest value increase to land and that the development approval process must not be fraught with uncertainty. In other words, most of the risk is taken in the rezoning process and is taken in the early stages. As you get closer to the end of projects there should be less and less risk.

Having said that, we do agree that third-party appeals on merits grounds should be limited. We do not agree that they should be completely removed. We think that they should be limited to legal and process issues and that there should be very little in the way of merits appeals at the DA stage. We think this act heads in the right direction but possibly goes a little bit too far in that.

So the Planning Institute supports limited third-party appeals rather than the open slather third-party appeals process that is within the existing system. We believe that consultation should be at the front end of the process. Notwithstanding the difficulty that communities find with understanding the intent of strategic planning, we believe that government departments should give clear strategic advice during the strategic process and not be reinventing or redelivering new advice or changed advice further down the line. We believe that there should be high-quality consultation processes early on. The current bill proposed amendments to heritage, tree preservation orders and so on. We believe that is exactly the type of stuff that should be dealt with early in the planning process and not changed later in the process.

I come to whether or not we think we can do things better. The Planning Institute agrees with the standard objectives for faster decision-making and greater certainty for critical projects but the improvements should be made in such a way that they are available to all citizens, not just the government. We also believe that several government departments need to be restructured to operate collectively in the interests of providing municipal services and developing the city to become a more liveable and more harmonious city for all citizens rather than a cash cow for government.

In conclusion, we do not support the intent and focus of the bill in its current form but would support amendments to the Planning and Development Act that make similar changes to the act, delivering more certainty at the development application stage and limiting a range of inputs to the strategic planning processes. We do agree that the EIS and DA co-assessment process is a good and logical fix to some existing problems.

The project facilitation mass rezoning objectives can be met, we believe, through existing legislation in regard to variations, precinct codes and overlays. We have good examples of that—for instance, the Bulk Water Alliance. That involved the building of a very large dam, taking from water courses and so on. There were a number of processes there where under the Planning and Development Act as it exists now we literally organised things so they happened very strategically and this did shorten the process quite a bit.

So there are examples, good examples, of major projects working well under the existing act. We think that those processes do work well and can work well. The new mass zoning approach for development rights detrimentally affects, we believe, democratic rights and best practice planning that is collaborative and fully participatory. Finally, notwithstanding that, we agree to the limiting or removal of

third-party appeals based on merit.

THE CHAIR: Mr Sinclair.

Mr Sinclair: The institute is the peak body representing professional planners. It has about 4,500 members. We represent planners in government, in the development industry and in non-government organisations. So we are quite a diverse organisation on the basis of membership.

The concern that the institute has in particular is that planning is a paradox. Cities are complex, self-organising and non-linear systems. Economic conditions are similarly complex and difficult to regulate and control. This procedural change that is proposed, though pragmatic, is simplistic in its understandings of the planning paradox, economic levers and drivers, and the effectiveness of the proposed change on what the LDA refer to as the planning pipeline. A planning pipeline is essentially an acknowledgement that the concept, the idea and dream of a project through to its design, to its subsequent procedural application process, can take many years, and often does.

In essence the idea of a fast-track system is a myth. The basis of this bill perpetuates that myth. That procedures are inefficient and holding up development is similarly a myth. This view is ignorant of the nature of economic development, project management and planning. Good planning anticipates all of the relevant factors and not just focuses on the system itself as a procedure. As evident from many ACAT appeals, the procedural errors are the focus and concerns of appeals such that ACAT now places itself as the decision-maker on DAs where the process has failed. Access to this avenue of appeal must remain. To do otherwise is to reward poor practice and the manipulative, pragmatic management of the system.

The immanent process does not remove the issue of the DA and the call-in powers, nor should it. The major issue with the proposed evading process is that it is exercising a coercive power for the time and area affected that excludes future spatial changes. This exclusion of other opportunities is where future complexity will arise. In effect, it is a first in, best dressed approach to strategic projects. It is not a strategic planning approach. Developments should be assessed on a merit basis and not on the basis of who is in first to the exclusion of all other developments, nor on access to the executive. I think they are basically our points.

THE CHAIR: Thank you very much, Mr Straw and Mr Sinclair. I will go to Mr Straw's opening comments in regard to the planning framework and that it was cumbersome. Can you explain how you see it as being cumbersome and whether there is a way of removing some of that cumbersome process?

Mr Straw: Sure. Mr Sinclair is more of an expert on that side than I am, but we have seen through some major projects that you have to think very, very carefully about how you are going to do the strategic stuff and how you are going to drive things through the process. People who enter the process with naive views that you can go from one step to another often end up getting stuck, and there are a number of good examples of that.

Mr Sinclair: If I may, Mr Chairman, two spring to mind—I was involved in one and familiar with the other—one is the Bulk Water Alliance projects at the Cotter Dam and the Murrumbidgee to Cotter DA processes. There were numerous heritage and environmental concerns, approvals, authorisations and a number of DAs from the full EIS impact DA through to merit DAs, all of which were programmed before anyone began the process. The process was evaluated, time frames were assigned to each of those projects, issues were identified, consultancies responding to those issues were identified and engaged. All of that time line was tracked through wonderful Gantt charts—the friend to good project management. All of that was done before the first DA had even started to be drafted and so the process moved very quickly. I think it achieved all of the stated approvals inside or at their desired time frames and, in accordance with the acts, established ideas that DAs should be approved within a certain period of working days.

That process was organised through cooperative management with the planning authority so that we identified up-front the issues we had. They identified their concerns of staffing and resources and aligning those with our delivery time frames for documents. So good process and good management of the process facilitated a good outcome, and that project was completed in terms of its approvals very effectively and very efficiently.

Similarly, I am aware that with Southquay, the master planning for Tuggeranong was alongside of and supportive of the variation. The variation process was completed efficiently and the LDA was able to then put to the market and successfully sell two of the major blocks to Southquay within a very short time—I believe a couple of weeks of the variation being proved. That is an example of the government using existing processes efficiently and effectively with interdepartmental communication resolving and working cooperatively in both the Economic Development Directorate and ESDD.

It can be done by government, and it is done regularly by private practice. That is the existing system and it works. We do not accept that the system is fundamentally broken. We accept there are some opportunities, and in 2010 the Bulk Water Alliance identified that it would be beneficial for an EIS and the DA to be assessed together. As it was, there was a minor step in the process, but effectively the two documents were prepared concurrently and that is how efficient processes are operated. We do not believe this system is really going to improve that.

Mr Straw: I think where people come unstuck is that there are a number of government departments that have three or four bites at the cherry—heritage, environment, and a number of other groups have an input into the strategic frame and then they get more information and they have a refined input later on. In the meantime they do some background work and discover that an item should be listed as heritage or whatever and it was not done up-front. This act basically says they have to do that stuff up-front; they have to decide whether it is heritage or it is not or whether it is a registered tree or it is not so it gets listed up-front. Once the zoning process is in place, that information goes in with the zoning and then you move through the DA stage.

We think that is a great concept. We represent government planners as well as private industry planners and not-for-profits and others, and we all recognise that planning

around heritage started back in the 1970s with people being concerned about losing something to gain something new and what is the offset. It is very important for communities that they understand that stuff. But some of that stuff has grown beyond what would be reasonable. So there are abilities to throw in big obstacles at the end of the process and take a developer—it might be a government developer—by surprise.

What happened with some of those projects was that we actually went out and did the studies and made sure that we really understood what were the heritage issues, what were the flora and fauna issues, what were the tree preservation issues, what were the transport issues around where vehicles were going to move and all that sort of stuff. Clarifying all those issues up-front, getting them out of the way and having good discussions in a single room really cleaned things up. But there is the potential for cumbersome revisitation of those issues in the current act, and we think that needs to be managed a lot better than it is.

Mr Sinclair: Again, I draw on personal experience and procedure. What the alliance did with its work out at the Cotter was that it recognised that with heritage items those bodies have their own time frames and you have to build those into the process as well. It is not a matter of saying, "There's a heritage issue. We'll go and get the consultant to look at this," and then get the report and say, "That's okay." You have to put that in front of a council, which has a time frame for when it meets. So you have to build in those time frames for when other parties and are able to make decisions.

Their process did not enable them to make a decision on the day so we had to factor in the extra time for their decision process as well. But we did that up-front before we even went to the council. When we did go to the council, we were able to advise them of what had been done and ask were there any other matters they had concerns for. We could then go away and deal with that. All of that was factored in as part of the project management of the project.

It is too easy to look at the DA system and say, "Well, 20 days here and 30 days there and we will get an approval." That is naive, and unfortunately this act in many ways responds to and rewards that naivety. We do not think that is appropriate.

DR BOURKE: So that is what you were talking about, Mr Straw, when you said that some parts of this should be available for all developments?

Mr Straw: Yes.

DR BOURKE: Is that specific to what you were talking about earlier, that compression at the start?

Mr Straw: Yes, that is what we are talking about. We think there needs to be a review, and what has been highlighted in this bill is something that is of concern right across the territory. It is a big concern in New South Wales and in Victoria as well, and it is being debated by planners across those areas. Basically, it is the ability of on-the-side government departments and other groups that really have no interest in the development going ahead having a second or third bite at the cherry as you get to more and more detailed stages. We think that needs to be dealt with up-front in the strategic planning process and then left.

DR BOURKE: What do you think would be the impact for private developments in the ACT if that changes?

Mr Straw: What you get is private developers looking at the ACT and saying it is a cumbersome system not because the act is any more complex to read but because there are these unknowns that can come in and hit you from the side late in the process and things can be stopped very late. Developers literally look at that and say, "Well, we'll go and develop elsewhere," and they are literally moving money outside of the ACT and developing in New South Wales. We are missing out on a lot of good development because of that.

We have colleagues who bring that up regularly at planning meetings. They regularly talk about how we go about changing this part of the system and how we bring it a little bit under control. It can be community groups as well. I know you are going to hear from community groups later on who are going to say to you, "We don't understand it at the strategic end. We want to be able to appeal these things at the end of the process." What we are saying is those appeals at the end of the process should be limited to either legal process issues or definitional issues.

Where there is a clear breach of a process or a clear attempt to circumvent a legal issue, yes, perhaps there should be a third-party appeal in that case. But when it is just a merits issue, the chief planner should have the authority to be able to weigh up those merits and say, "Well, I think this should go ahead or it shouldn't," and that should be the end of the matter on the merits issue.

MR COE: Has the Planning Institute been contacted by the government about this bill?

Mr Sinclair: Yes, after it was released. Again, our concern here is that what we consider to be a significant piece of legislation was not communicated and was not consulted on. As a peak body with an interest in planning we would have hoped that someone might have thought that perhaps we should be consulted.

MR COE: The bill was tabled, I think, on 20 March, and so the Planning Institute was contacted after that?

Mr Sinclair: Yes, in April, and after we had been approached by the media in regards to commenting on the bill.

MR COE: So the media got to you before the government in effect?

Mr Sinclair: Yes, they did.

MR COE: Given that the government did not bring any amendments to the table at the time of bringing the bill on for discussion, it seems fair to say that they did not take on board any of your commentary. Would that be so?

Mr Sinclair: It is difficult to see how there was time to do so. We are also concerned with the untimely haste with which this has been both promoted and put through the

process of legislation to date. We were greatly relieved that this committee has been involved in the process now, otherwise what would have necessarily gone through to the Assembly would have been a substantial piece of legislative change with minimum oversight and view and virtually no community input. This legislation directly affects the ability of the community to participate in planning. We find that surprising.

Mr Straw: I do not want to mislead you, Mr Coe. We actually received a request from Jim Corrigan to attend our monthly planning meeting and discuss it with our committee. So that would have been the first Wednesday in April. So after our responses had gone to press we were approached by Mr Corrigan and he came to speak to us and address us at that stage. It was late in the process, but they did not completely ignore us.

MR COE: Was that more of a briefing than a consultation?

Mr Straw: That was a briefing.

Mr Sinclair: It was an information session. From our perspective I guess that comes back to the importance of consultation as opposed to information. The overview of a DA process and taking the pressure of community concern out of the DA process is that you consult up-front in the initial process rather than wait until it is a detailed DA that is really only able to then relieve the community's concern through an appeal process. Taking away that appeal process simply contains the pressure of community concern without an outlet of release. If you like, the appeal process is a pressure release valve on the DA system. We would suggest that by more informative consultation up-front you may well reduce that pressure.

MR COE: For both the DA and the development of a bill, perhaps.

Mr Sinclair: Yes.

THE CHAIR: Thank you very much for coming in this morning, Mr Straw and Mr Sinclair. The secretary will send you a copy of the transcript over the next few days so you can check for any transcription errors.

ODGERS, MR BRETT, Walter Burley Griffin Society

THE CHAIR: We welcome our next witness, Mr Brett Odgers, from the Walter Burley Griffin Society. Before we begin, I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table, the pink card. Can you confirm for the record that you understand the privilege implications of the statement?

Mr Odgers: I am happy to do that, yes.

THE CHAIR: Thank you. We have your submission. Would you like to make an opening statement?

Mr Odgers: Yes, thank you very much; I would like to. I am a resident of Canberra but I sit almost ex officio, because we have a Canberra chapter for the Walter Burley Griffin Society so I attend periodic management committee meetings in Sydney. Typically, this brief submission is a product of consultation amongst the management committee members, Canberra chapter members—it is easy these days to have conversations quickly—and other academic, professional and retired members of the society who have had an input to this brief submission.

I do not want to take too much time, because questions will yield more exploration of the issues, but I would like to say that all of us—and I have lived here all my life—want Canberra to develop as a fine city in which to live and prosper. We seek high standards and opportunities. Opportunities are more abundant now than they ever were. The Walter Burley Griffin Society is lobbying for such a city, in particular a fine national capital and a sustainable city conserving what still remains of Walter Burley Griffin's great planning for the capital and applying to development plans the design principles and life values of Walter and Marion.

Central to the Griffins' legacy are commitments to art, nature and democracy. With Minister Corbell's haste to yet again streamline and fast-track what are already fast-tracked development assessment procedures, one needs to remember that, as a planned city and as a community, we are striving for development outcomes that satisfy our environmental setting, high design and creative standards and democratic institutions. These are basically the same outcomes formulated in the ACT government's ACT planning strategy issued just a year or so ago. There are five outcomes for 2030, plus the commitment to democracy, which, as I say, flows as much from the Griffins' legacy as it does from our inherited cultural institutions and constitution.

In the society's view, the major problem of the draft Planning and Development (Project Facilitation) Amendment Bill 2014 is the specious claims about transparency and accountability, when in reality they threaten a marked decline in democratic processes with inevitable consequential poor outcomes in terms of environmental heritage, design and social outcomes.

The society has tendered a brief submission, dated 22 April, in which we indicate our sympathy with the aim of this draft bill to avoid inordinate development assessments

of the past and the negative effects of applying the ministerial call-in power. We all want timely, orderly and efficient processes. That is the first point of our submission, but the sorts of projects envisaged—major significance, special precincts—are, by definition, major, long term, direct and indirect, cumulative, external as well as internal and strategic in their effects and impacts. Our second point is about the removal of the proposed ministerial call-in power. The deletion of that call-in power seems to us a good idea. We are looking for replacement checks and balances with this bill.

In relation to the negative aspects of the bill, we make three points here, about removal of appeal rights, which has been discussed over the past half an hour; removal of the application in the Heritage Act and the Tree Protection Act; and fast-tracking environmental impact assessment and development assessment. In our view, these negative aspects should be rejected as totally unacceptable.

The society, like the Planning Institute, is concerned by the cumbersome nature of planning in the ACT and the fast-track based, code assessment based system of development approval that has led to many unintended and poor-quality consequences. The proposals in the bill may improve the situation if they are based on sound principles of urban development and design. Of course, with the light rail system proposed by Walter Burley Griffin, you have got his tramways and his boulevards, envisaging European-style denser residential and mixed uses—set back from the boulevards but nevertheless with high-density populations. But central north and south Canberra is still nowhere near the population of 70,000 which was envisaged by Walter Burley Griffin commensurate with his design.

I have particularly emphasised democracy. In his first reading speech, the minister drew interstate comparisons. He said that the ACT is only emulating the other states. I disagree with what the Planning Institute image has given—of untimely haste with this bill. This bill is all of a piece with amendments to procedures in the planning system over a long period of time, a good 10 or 15 years now. We have fast-tracking overlaid by fast-tracking and the removal of real deliberative democratic checks and balances is a persistent development.

We are now almost in an area of extreme examples of that old development assessment forum model adopted by COAG and pursued by some of the states. The ACT has been a model of code assessment and split forms of environment impact assessment which essentially have diluted the virtues of environmental impact assessment. A revised bill has to restore some of the lost democratic checks and balances and put back in place the virtues and benefits of the environmental impact assessment process which has been implemented in Australia, and in Canberra in particular, since the early 1970s. One need only instance New South Wales, where similar sorts of extreme manifestations of this development assessment fast-tracking model led to complete blockage in the Legislative Council of the new planning legislation in New South Wales. It was very controversial right across the community—as this particular draft bill is controversial across the ACT community.

I need only hold up the example, and this is symbolic, of the Australia forum proposed for the slopes of City Hill. There was a speech given by Geoff Gallop recently about deliberative democracy and all the new forms of deliberative

democracy which have been proven in one situation or another around the country—citizen assemblies, round tables, consensus conferences—seeking the common good where, amongst the outcomes, are trust and shared ownership in the outcomes and in the process itself.

I have witnessed it myself. I sat in the public gallery of the National Capital Planning Commission in Washington. They have monthly meetings with agendas determined by citizens and other professional and resident interest groups, as well as government departments, conducted on roundtable principles where they manage deliberative debate. For some years now this routine of true deliberative consultation, where there is feedback and where there is consensus building, has been absent, more or less, from so-called public consultation, even under NCA auspices, although it was a little better than the ACT government. This bill typifies, exemplifies, the dilution of robust and healthy democratic institutions in this city.

By contrast, we have a more technocratic, more coercive, top-down approach with too much reliance on representative democracy—that is, the Legislative Assembly. You have less than 40 sitting days a year. How much more time can the Legislative Assembly devote to deliberative consideration of very complex major proposals and variations to the territory plan?

In the last seven years, the time that I have been heavily involved, the experience of the Walter Burley Griffin Society is that in reality even the consultative processes that we have at the moment are skewed in favour of what the Planning Institute was referring to as "that black box" early in the process—early revelation of what is going into the pipeline. The minister, in his first reading speech, said that the government would declare a major project or special precinct, but without reference to what was in the pipeline leading up to that declaration. That makes one very nervous because it has always been, even in the early days of environmental impact assessment, what happens earlier on, before government, developers or public sector proponents are prepared to give notice or to invite public comment.

A very good example we have been involved in recently is the slipway decision. We put in a very carefully considered submission on the location of the boat maintenance slipway on Black Mountain Peninsula. Again, the consultation report effectively gives no credence to any of the community submissions. It was a technocratic managerial decision quite clearly based on grounds which were fairly alien to most of the submissions that were made to the National Capital Authority in this case.

I might also refer to the Griffin legacy amendments. You could consider the Griffin legacy amendments of 2007 to be something like the declaration of special precincts, because it identified Constitution Avenue, City Hill and West Basin special precincts and then laid out a number of structural changes—which were cleared by the federal parliament, so they are on the statute book. Most of the cabs that have left the rank and gone into public consultation under the auspices of the Griffin legacy amendments have fallen over or attracted widespread public opprobrium. What you are up against here is that you need more democratic scrutiny of values, of alternatives, of the way things have been shuffled around in the pipeline, of whose interests are being served and so on—but this bill, again, exemplifies what one must call more outsourcing, more devolution. In fact, it is devolution to the bureaucracy, devolution

to the more municipal functions of the Legislative Assembly, outsourcing to all the consultants—the battalions of consultants who do all this preparatory work early in the pipeline which does not get a lot of satisfactory public notice or genuine deliberative consultation.

I will just finish on the note of what we can see in the future with respect to the application of the Griffins' values and principles. We are looking at those great boulevards. Northbourne Avenue is the case study at the moment. He had a clear vision for what the entry boulevard would look like, but also for the other boulevards which serve the build-up of the population, with residential mixed use in the city areas.

I must say that the Walter Burley Griffin Society is supportive of light rail, which is going to transform so much of Canberra, and also that specific proposal for development of a mental health facility in Symonston, in the Jerrabomberra valley. Again, we would support such a development. I wonder what the government is scared of. Why do they need a new bill to facilitate such a development proposal? Thank you for listening to me.

THE CHAIR: Thank you, Mr Odgers. I might firstly go to your submission. You have mentioned the cumbersome nature of planning in the ACT, alongside the Planning Institute of Australia. You said underneath that that the track-based system of development has led to many unintended consequences. Could you give us a bit of detail on what you feel are the unintended consequences of the track-based system that is currently in place?

Mr Odgers: Failure to consider alternatives—location, spatial dimensions, scale, timing, design standards. There is a lot of mediocre architecture when the national capital, and indeed Canberra as a community, aspire to more attractive—so more impressive design and mixed infrastructure. I need to refer to a lot of the buildings that have gone up around Civic, the more recent developments and the Kingston foreshore. Environmental impact assessment in its halcyon days always demonstrated that, given more time and more professional and community input into the design of proposals, yielded better proposals on any form of cost-benefit analysis.

THE CHAIR: That brings me to my second quick question for you. The PIA also said they do not feel that those looking at proposals should have a second and third bite of the cherry with regard to environmental impact statements.

Mr Odgers: Yes. That resonates positively with me, but at the same time I also draw attention, again, to the development assessment forum model adopted by COAG which has progressively been strengthened in the interests of governments and proponents—public sector and private sector proponents. The NCA followed the ACT in this respect where now there are such tight time frames that you cannot get decent deliberative consultation.

Well and good the one chance, and we have learned to live with the one chance. We have not ever presumed the second bite of the cherry but, having worked in the older Department of the Interior and Capital Territory and been associated with NCDC's rapid development, there has always been a craven fear in government in the ACT about resident action groups. They have not managed it well.

It is a bit like the referenda to amend the constitution. Governments have never handled their proposed amendments to the constitution terribly well because they have not taken people into their confidence. There has not been a bipartisan or multi-partisan approach, or the information has not been there. I do not think any consultations with respect to resident groups should allow those second and third bites of the cherry—that is mismanaged public consultation—with the exception that there ought to be an appeal right for judicial review as to just how well based, formally, the executive decision-making has been. So judicial review is provided and it is also properly constrained. It is one of those essential checks and balances which we are losing, particularly with respect to this bill.

THE CHAIR: Colleagues, questions?

DR BOURKE: Thank you. Mr Odgers, in the submission you mention that the proposal has some positive attributes and you include two of those. Were there any others that you wanted to let us know about?

Mr Odgers: Unfortunately, I have not been able to. I tried, but I did not have enough time to really go through the draft bill. Just scanning the minister's explanatory statement, which proceeds section by section, I could not get command of it. I have not previously been involved in any discussions with the architects of this legislation. It caught me by surprise when it became public knowledge through the print media. Offhand, no, I cannot provide you with any others.

DR BOURKE: In your answer to the chair before you talked about a longer consultation period. Did you have a defined time that you think would be appropriate?

Mr Odgers: Yes. For community groups, provided you see the public notice, there is even provision in the bill for variations of the territory plan to be on the table for public scrutiny for only 20 days. The NCA effectively apply a 30-day rule to a lot of their major proposals and even amendments to the national capital plan. Twenty or 30 days is just too few; 60 days was always a reasonable time frame.

DR BOURKE: I noticed in your discussion about the democratic processes, which was extensive, that you described a decline in the democratic processes. I think what you are really drawing out there is your view of community democratic processes—in other words, the difference between representative democracy, which is what we on this side of the table effect within the Assembly, as opposed to democratic processes, which involve the community but may necessarily be unrepresentative. Is that the case?

Mr Odgers: Not at all. I said in terms of our democracy that our society should be pursuing sustainability. The instrument we have is our democracy, which is a host of democratic institutions. The ANU produced a report on the health of Australian democracy generally about 10 years ago. The title of the book was "Australia's democratic deficit"—because Australia's democratic institutions are not as healthy and are not heading in the right direction as they should be.

I was talking about the whole system. With those democratic institutions, I might have

been drawing on the experience of professional associations, residents' associations, community or town-based associations and regional organisations, all of which I have been familiar with. The Walter Burley Griffin Society, for example, has a national membership. There are half a dozen guys over in Perth, down in Melbourne—they are not so active these days but they are still available—and Brisbane who contribute to our input. So there is a national conversation there that we can tap into. You have statutory bodies.

I should think that a lot of the work done by community-based organisations is mutually supported by commissioners—commissioners of consumer rights, human rights and discrimination—all of whom are part of a healthy democracy. But it is not operating very well when, after filling two volumes of submissions over the last five years, the Walter Burley Griffin Society, in common with most of the allies that we lobby alongside, find that the government and the bureaucracy give very short shrift to our carefully considered submissions. Time and again we sit at meetings that are organised, not on a consensus building or integrative or staged process where there is some mutual learning and enhancement and redesign going on but on tokenism.

What other avenues have been cut off? One in particular in the ACT is the dual planning system we operate under. It is very confusing that there is so little genuine cooperation, collaboration and integration between the National Capital Authority and the ACT planners. There is a bifurcated planning system. They operate in different time frames, for example. In genuine deliberative democracy people are seeking to have more genuine public input in the process, not elections every three or four years.

How capable is a parliament these days of handling climate change if they do not depend on sources of expertise, if they do not rely on a diversity of views as to how we should handle it or what imperative there is to find technological solutions and means of cooperation so that we work across the board in a direction which is going to answer these imperatives?

I do not belittle representative democracy at all, but the Legislative Assembly is a single chamber dealing with state and overlapping national issues. You tackle national issues in the legislative chamber—not just municipal but state and quasi-national. You are only one chamber and there are only 17 of you, and you only meet 40 days a year. I do not know how often committees meet, but committees are an essential part of a healthy parliamentary democracy. We have a fast-track committee process now to look at a complex bill.

THE CHAIR: Thank you, Mr Odgers. Questions?

MR COE: Just briefly; I know we are pressed for time. Mr Odgers, under the current planning system do you see any impediments for the construction of things such as light rail or the mental health facility in Symonston?

Mr Odgers: No, I do not. They both seem to be coming along very well indeed. The public has been brought in. There is a good database or information base there. This is a major challenge for the community and I think it is being handled very well. Walter Burley Griffin always designed a tramway down Northbourne Avenue.

We do worry about heritage generally because heritage is not being upheld to the degree it ought to be in the ACT, or elsewhere in the nation. Under the present federal government, of course, heritage and environmental impact assessment have all been effectively devolved down to the states, and the states are pushing a lot down to the local government level—witness, again, New South Wales.

There are one or two heritage issues with respect to certain 1950s-style architecture further up in the northern parts. I am not an architect; I am an economist, but I am aware, from the Institute of Architects, that there are some heritage values—not the public housing but further north towards Dickson—and consideration needs to be given to those. You can lose heritage but you ought to take it adequately into account. There might be a heritage obstacle there. You have a witness from the Heritage Council today and that is a question for him. I am not an expert on that.

Griffin certainly envisaged a lively Northbourne Avenue with high-density residential set back and a tree line. You would probably have to remove some of the dying or unsuitable trees from Northbourne Avenue. People do not like seeing trees chopped down but, again, in recent years, thanks to the NCA in particular, we have had a lot of public awareness raising about tree removal and renewal of our trees. You can keep some and lose others—and it can all be reasonably set out—and meet with public acceptance, potentially.

MR WALL: Mr Odgers, you mentioned a moment ago that your background and training is as an economist. The minister has introduced this bill into the Assembly under the guise of a stimulus package. Do you think that the existing system as it stands is prohibitive to development in the ACT on an economic side, and will this bill bring the touted benefits? Or do you think it is a guise for bringing through some radical change?

Mr Odgers: That is the key question: why this bill? There are two points. One is the case has not been made. The minister has not demonstrated the urgency of this bill or the draconian overplay of the provisions. The case has not been made. On the other hand, I believe Canberra has a very sound productive base with our population growth, our diverse economy, our rate of job creation and our science base almost from day one, 100 years ago. Griffin, bless him, tried to start a few other industries, recognising that as an inland city we needed diversity in trees—oak trees and plantings—and that a few other things needed to be set up, some industrial estates here and there.

There has been a strong economic base for Canberra's development. I think the contemporary indicators of economic prosperity generally for the ACT are good; they are sound. It may be that the building industry wants to keep a workforce intact but, as an ordinary citizen, I do not see a lot of anecdotal evidence that the building industry is losing momentum. Maybe Minister Corbell can make out a case for this.

There is always uncertainty about the future. My private sector friends have always said, "That is why we do better. We earn better than you do because we take risks." But they are always uncertain—I know they are: the property developers, the builders, the investors, the property owners and the managers. There is always uncertainty but, again, it is so frequently overplayed. The federal Treasurer is putting on a classic song and dance at the moment about how bad the situation is and how things have to be cut,

although in this case we are talking incentives.

THE CHAIR: As there are no further questions, thanks very much for coming in, Mr Odgers.

Mr Odgers: My pleasure.

THE CHAIR: We will send you a copy of the transcript over the next few days so you can check for any transcription errors.

Mr Odgers: Thank you very much.

Sitting suspended from 12.22 to 12.46 pm.

KWIATKOWSKI, DR MAX, private capacity

THE CHAIR: Our next witness is Dr Max Kwiatkowski. Before I begin can I remind you of the protections and obligations afforded by parliamentary privilege? I draw your attention to the privilege statement before you on the table, the pink card. Could you please confirm for the record that you understand the privilege implications of the statement?

Dr Kwiatkowski: Yes, I understand.

THE CHAIR: Thank you. Do you wish to make an opening statement to the committee?

Dr Kwiatkowski: I am here as a private citizen, but I work in the federal government. I am a committee member of the Weston Creek Community Council, but I am here in a private capacity. Tom Anderson, the chair of the council, will appear later, I understand.

THE CHAIR: We have your submission already, but would you like to make an opening statement to the committee?

Dr Kwiatkowski: I mentioned in the submission that I do not support the bill as currently drafted for a number of reasons. First of all, it concentrates power in the Legislative Assembly. It breaks down the traditional separation between planners and government and also minimises opportunities for consultation. It overrides due process, particularly in the right of appeal. It is very blatantly pro-developer and skews the planning system against residents and other concerned citizens and stakeholders.

It will be open to abuse and influence, partly because the definitions are so vague in the legislation. For example, I am very concerned that there are no limits on what the legislation can be used for. In terms of the criteria that projects must be of substantial public benefit or major significance to the territory, there is no definition around that. So in theory any project could fit that criteria and be fast-tracked, even an apartment building or whatever. I understand that the original rationale behind the legislation was for very large projects or government-initiated projects like the mental health facility. In future I think this legislation has the potential to let a lot of projects get through the cracks, which benefits only developers or is for private gain.

Another thing I noticed is that there is a potential conflict with sections 17 and 21 of the Human Rights Act. I think this should be looked at more thoroughly by the Human Rights Commissioner or, at the very least, independent legal advice should be obtained.

The other thing is that Shane Rattenbury and others have argued that we need this legislation because it is better than call-in powers. The way I see it, first of all, is that it does not replace call-in powers, so that is a furphy. Second of all, there are additional measures in there which take it further than call-in powers—for example, the removal of the rights of appeal under the ADJR and time limiting Supreme Court review under the common law. These are not features which are contained in the call-

in powers. Therefore, this legislation takes it further.

In some ways there are improvements over call-in powers in that there is oversight by the Legislative Assembly rather than just one minister, but that is like comparing cocaine and heroin. Both are bad but in different ways. Ideally, there should be another option, or abstinence—go with the normal planning process rather than try and legislate projects.

The other thing that concerns me is that it seems to me that legislators see the bill as less controversial than call-in powers and therefore it might be used more often. In part, because of the definition—there is no definition—in the majority of developments in Canberra politicians will try and fast-track them, which is a bit of a worry. There are processes in place at the moment and if they are done away with then the community's concerns are overridden or trodden on. That concerns me.

Lastly, I just want to add that I am very disappointed at the lack of consultation around this bill. It is good that now there is a process in place, but originally the government did not let the community and stakeholders know this was happening until the very last minute. This is important legislation and I think it should be looked at very carefully before it is voted on.

THE CHAIR: Thank you very much, Dr Kwiatkowski. Mr Wall, do you have questions for our witness?

MR WALL: Yes. Dr Kwiatkowski, you mentioned in your submission that there was very little consultation about the presentation of the bill. Why do you feel that the government has taken a step to obviously try and introduce this legislation in such a quick time frame and with no consultation prior and very little after?

Dr Kwiatkowski: It is a good question. I prefer to think it is because they want to get the mental health facility approved and fast-tracked as soon as possible and also light rail—so the project has started before the next election and once it has started it cannot really be stopped. That is one possible reason, but the other one is probably just lack of foresight—not on the part of the government necessarily but maybe the relevant directorates. That is the only thing I can think of. I am sure the ministers did not intend to ram it through as fast as they have. Maybe they were not aware that the directorates did not go out and consult.

MR WALL: Just a further one. In your submission you talk about, I guess, safeguards that currently exist, but under the proposed bill ultimately the only way of preventing a precinct being designated is by a vote of the Assembly. Do you think that would be a sufficient safeguard, or what improvements do you think need to be made in that area?

Dr Kwiatkowski: It does not mean it is not a sufficient safeguard. At the moment we have a nicely balanced Legislative Assembly; it is not a majority government. There is some kind of buffer in the Greens vote, but in future if one party has a majority rule that is not much of a safeguard. The MLAs would necessarily just vote along party lines and would probably give the planning minister whatever he wants. Ministers are not planning professionals so they cannot really question the detail of the project to

the same extent as professional planners might.

In terms of possible safeguards, there are a number of things you can do. One is to have a two-thirds majority or a three-quarters majority instead of a simple majority. Before the Legislative Assembly gets to vote on it, you would have to have additional measures in place. I am not sure what they might be, but it could be that the project has to meet very objective criteria, for example.

As I pointed out in the submission, at the moment there are no independent objective criteria. Just as long as it gets a tick, the Legislative Assembly gets to vote on it. I think there should be some parameters set down in the legislation that only allow particular types of projects to get through, not any old project. I guess the easiest way not to deal with that is just not to have the legislation at all and remain with the status quo. That would be the easiest solution.

MR COE: You spoke earlier about the broad scope of the projects that could be included in the broad definitions of the bill, including, perhaps, an apartment building or whatever. What inappropriate influence do you perceive could arise as a result of that broad definition?

Dr Kwiatkowski: I think a lot of lobbyists or developer interests might, as they already do, lobby the government. At the moment there is only so much influence they can have because approval has to go through an estimable body like ACTPLA. Professional developers vet their applications. As soon as the minister and the Legislative Assembly get more of a say in what is not approved or fast-tracked, that leaves the system exposed to a lot more influence from lobbyists or developers. As we have seen in New South Wales, things are open to influence. At least there is a perception that they are open to influence.

There is already a perception in the community that there are a lot of links between the ACT government and building and developer interests. I note that with the project facilitation bill the government came up with the idea as part of the stimulus package for the building industry. That suggests that this is something that the building industry and the government want. Why do they want it? Because it makes things easier for developers and the building industry. By the same token, it probably makes things more difficult for people who have legitimate concerns about developers, whose right to appeal and have their say will be taken away from them.

THE CHAIR: Thank you. Dr Bourke.

DR BOURKE: Our two previous witnesses have talked about the cumbersome nature of the ACT planning process. Do you concur with that?

Dr Kwiatkowski: I do not think it is necessarily any more cumbersome than it has to be. If it is cumbersome, it is like that for a reason. A lot of things are complicated in the world. If things were easy then things would be a lot more open to abuse. I am sure there is room for streamlining, but I am sure it can be done by rationalising the planning system without necessarily legislating projects. It seems the wrong way to go about it, just legislate, legislate, legislate. Why not overhaul the system if it needs overhauling?

I note that even the Planning Institute of Australia has noted that the system in the ACT is not broken. If developments proceed slowly, it is for other reasons—not just because of the appeals process, consultation, the two-step territory plan variation and ACTPLA approval. There are other reasons why projects proceed slowly or fail.

DR BOURKE: You talked about links between industry and government. What did you mean by that?

Dr Kwiatkowski: You mean the development industry?

DR BOURKE: Yes.

Dr Kwiatkowski: Obviously there should be links with any kind of industry and government. Would government be doing their job if they were not having some links? But there is the perception that it is a bit incestuous. A lot of things are being approved out there that maybe should not be and there is this whole pro-development agenda and light rail thing. One of the main reasons that Minister Corbell has said we need light rail is to increase property values along the Northbourne corridor. Who would benefit from that most of all? It would be developers. If that is such a good idea why don't the developers fund light rail?

I am just saying that there is a bit of a perception in the community, and I am sure there are links between developer interests and government. I am sure they are all above board at the moment, but my point was that in future this legislation will open the door for more malfeasance to emerge and there are not enough checks and balances to prevent untoward influence. It is alright to accept donations, but it is when they begin to influence decision-making—and this legislation opens the door for more of that kind of influence, I suspect.

DR BOURKE: You said that you did not think that politicians were the proper people to be making planning decisions. How do you account for the number of community groups that call upon us to stop planning proposals that they do not like?

Dr Kwiatkowski: That is oversight. That is not making a decision.

DR BOURKE: No, they are specifically asking politicians to stop things.

Dr Kwiatkowski: That shows me that the system is working.

DR BOURKE: I am sorry?

Dr Kwiatkowski: That shows me that the system is working. If it is not working, like I said, it could be that the problems could be addressed in other ways rather than by having a huge overhaul through hasty legislation. That seems the wrong way to go about it.

THE CHAIR: You raised haste in legislation again and you commented on that earlier. You said that the introduction of the bill was over a very short period. What do you think the time line for an introduction of a bill should be?

Dr Kwiatkowski: In my job in the federal government we have a four-week minimum consultation period. First of all, the community would have some kind of inkling that a change to legislation was coming. Then the draft legislation would come out, the community would have four weeks and the stakeholders would have four weeks to comment on it. Then the government would go back and incorporate those comments, usually within another four-week period. Then a redraft would be released. Often there would be another opportunity for comments but usually it would be just tabled in parliament at that stage. Then the parliament or the Legislative Assembly would tweak it a bit more.

Often before the draft legislation was released there would be an options paper or discussion paper. If there was an issue, it would be put to everyone. People would look at the discussion paper and say, "This is the issue. Maybe this is really a problem. There are three or four ways that the problem can be dealt with. Option (a) seems the most reasonable. Let's go with that." When you just put out legislation with no discussion paper, no problems identified and no opportunity for people to provide feedback in a reasonable time frame, that leads to hostile stakeholders.

THE CHAIR: You are suggesting that four weeks is appropriate?

Dr Kwiatkowski: Yes.

THE CHAIR: As there are no further questions, thank you very much for coming in this afternoon. The secretary will get you a transcript of today's proceedings for you to check for any typographical errors.

MARSHALL, MR DUNCAN, Chair, ACT Heritage Council
GURNHILL, MS ANNA, Acting Manager, ACT Heritage Unit

THE CHAIR: Mr Marshall, it is Mick Gentleman calling as Chair of the Planning, Environment and Territory and Municipal Services Committee in the ACT. You are now being broadcast via the committee's hearing and transcribed by Hansard via this teleconference. Welcome and before we begin, I remind you of the protections and obligations afforded by parliamentary privilege. I draw your attention to the privilege statement that I understand has been sent to you. Could you please confirm for the record that you understand the implications of that statement?

Mr Marshall: I do understand, yes.

THE CHAIR: Thank you.

Mr Marshall: I should say that I have sitting as an observer with me Anna Gurnhill who is the acting manager of the Heritage Unit.

THE CHAIR: Wonderful. Welcome, Ms Gurnhill. We have your submission, Mr Marshall. Would you like to make an opening statement to the committee?

Mr Marshall: Yes, very briefly, I think the council's submission covers the points of interest and concern with this project facilitation bill. But I pick up some of the key messages made early in that submission. Council understands the government's objectives with this piece of legislation but it also has to promote good planning outcomes with regard to heritage places and objects in the ACT. What we are concerned about is that there may be many different ways in which heritage can be protected effectively through development activities. There are many pathways in this activity. The existing Heritage Act and the existing planning act are one way.

The project facilitation bill has an alternate model, but we are very keen to ensure that the project facilitation bill still results in fully informed decision-making, especially with regard to heritage matters. That includes a good understanding of the heritage values of places and objects which might be impacted, that there is an expert independent assessment of the impacts of any such development and also a recognition that an important role that the Heritage Council plays in the current system is a negotiation process with proponents where we see proposals at hopefully an early stage. There is a negotiation from that point where perhaps a better heritage outcome can be achieved through that negotiation process.

That is a quality that we would not like to see lost in the current proposed facilitation bill. We think there may be some unintended consequences arising from this bill. We have highlighted a number of areas where we think that could occur and we have made some suggestions, of course, about how we think those matters might be best addressed.

THE CHAIR: Thank you very much, Mr Marshall. We will go to questions from the committee. Mr Wall, do you have questions for Mr Marshall?

Mr WALL: Thank you, Mr Marshall. In your submission you talk about some of the

unintended consequences particularly relating to areas that have potential heritage value that have not yet been identified being overlooked if they are designated as one of these precincts. Could you elaborate on that and some of the other potential issues that may arise as a result of this bill as it stands?

Mr Marshall: Certainly and thanks for the question. Regrettably, and it is the case in all jurisdictions in Australia, we do not have a perfect understanding of our heritage places and objects. It is an ongoing evolution of understanding, partly because of resourcing but partly because of an evolving understanding of what are the places that constitute Australia's heritage.

In the ACT we have a backlog of existing nominations but in addition there are probably places out in the ACT community which are also of heritage value which have not yet come onto the radar. Good planning process means making informed decisions. That involves understanding the range of qualities and values which exist in a given location subject to a particular development.

We think that one of the possible consequences of this legislation may be that when an area is declared subject to this piece of legislation, there is no active effort to fully understand the range of values which may exist in that location that have not yet been formally identified through the ACT heritage register. They may be places, as I say, on our existing register or they may be places which are out there in the community but which have not yet come to the attention of someone to nominate those places or to the attention of the council itself.

MR COE: Mr Marshall, Alistair Coe here. I have a question about when the Heritage Council was informed of this bill. It was tabled, I think, on 20 March. Has the Heritage Council formally been advised of this bill?

Mr Marshall: Certainly through the directorate, council was informed. I do not have that paperwork with me but my recollection is that around the time the bill was being brought forward to the Assembly, the council was notified that the bill was coming forward. That started off a series of consultations and deliberations about the bill.

MR COE: Did the council pass on any feedback to the government about the bill or did you have time for that to happen?

Mr Marshall: The sequence was something like that the written material about the bill was made available to the council, which was considered out of session. There was then a council meeting very shortly after that point in time. Officers from the directorate in fact briefed the council about the bill. In the short space of time after that meeting, the council provided written advice to the minister about its views on the bill. Those views are essentially parallel to the sorts of comments that we have made to the committee.

MR COE: Did you receive a response from the government or the directorate to the letter you wrote?

Mr Marshall: Not yet as far as I am aware. As you are aware, it has only been in the last week or so, I guess, that these matters happened.

MR COE: Yes, that is right. On a similar but different issue, do you know where the bill to amend the Heritage Act is up to?

Mr Marshall: I understand that there was an exposure draft essentially of the bill. There was the opportunity for people to make representations to the minister. The minister, I think, has received those materials, that information, that response. He is considering how to move forward taking account of the various matters raised.

MR COE: Roughly, when was that exposure draft presented to the Heritage Council?

Mr Marshall: I apologise; I do not have that information to hand. It was some time ago. It may even have been in 2013.

MR COE: Yes, but—

Mr Marshall: I apologies but—

MR COE: That is okay, but for that bill, or that proposed bill, there has obviously been a substantial period of notification and consultation.

Mr Marshall: Yes, that sounds right.

MR COE: Thank you.

THE CHAIR: Dr Bourke?

DR BOURKE: Mr Marshall, Chris Bourke here. I want to ask a question around the recommendation of an amendment to ensure the continued application of the protective mechanisms for Aboriginal sites provided under the Heritage Act. Could you talk the committee through that, please?

Mr Marshall: I guess what we anticipate is that this legislation might be used to facilitate a project, for example, in a greenfield environment. As I am sure everyone is aware, design development takes place and surveys are undertaken. In many instances, Aboriginal heritage sites or places are found in that process. There is a negotiation under the current arrangements for achieving the best possible heritage outcomes for those places. Sometimes regrettably there has to be salvage and relocation. But on other occasions, important heritage places are protected through the design development process. That is all under the existing legislation.

I guess in a similar way to our concern about any heritage values or places, we do not want to see heritage ignored in this process, particularly Aboriginal heritage ignored in this process. There may be important heritage values in areas subject to this bill. There may be direct conflict between development proposals and Aboriginal heritage. In fact, there may not be a conflict, but informed decision-making requires that that information is well understood, that the necessary surveys are undertaken and that appropriate steps are taken to protect our heritage into the future.

In a sense, we think that turning off the Heritage Act through this current bill is a very

unfortunate step to take for what is often an unrecognised aspect of our heritage. We think that reinstating it, or making sure that the existing provisions can continue to work, would be an important way of making sure that Aboriginal heritage values are recognised in the first instance, but hopefully protected as well.

DR BOURKE: Thank you.

THE CHAIR: Mr Marshall, we have had some comment earlier on today from the Planning Institute of Australia that discusses environmental heritage proponents where they have said they often get a second or third bite at the cherry during the planning process. Do you have a view on those comments?

Mr Marshall: I am not sure I understand the second or third bite. Could you perhaps give me a bit more context?

THE CHAIR: I think, if I remember the conversation correctly, it was in regard to the processes of draft variations and development applications, whereby there may be evidence uncovered by heritage proponents or environmental proponents during a process—whereby, towards the end of the process, they find an issue that needs to be dealt with or perhaps is in conflict with the plan itself.

Mr Marshall: I understand. My response to that would be that everybody is after certainty in these activities. Proponents are after certainty. The community and the heritage-interested community are after certainty as well. A way to avoid the second and third bite problem may be to make sure that your up-front studies, your up-front surveys, for heritage and environmental issues are robust in the first instance. That way, there will not be surprises down the track.

THE CHAIR: Thank you. More questions?

MR COE: On that last point, do you, either in a Heritage Council capacity or individually, believe there is merit in having a development application lodgement concurrent with an EIS being prepared?

Mr Marshall: It is not a matter that the Heritage Council has directly considered, but my tentative thoughts would be that there is a risk involved in that process, in that if the EIS is found to be not adequate in some way, if it has not dealt effectively with heritage or environmental issues, the proposal falls over, in a sense, or is stalled while those issues are reviewed and revised and a better impact assessment is undertaken. That may delay a development project.

On the other hand, the Heritage Council does not deal with many environmental impact statements, but we certainly deal with heritage impact statements, which are usually a much smaller, simpler impact assessment focusing just on heritage values. It is certainly the case that development applications and heritage impact statements have been lodged concurrently in the past, and my recollection is that they have been successfully dealt with. The one qualification I would make is that usually that lodgement has occurred after significant prior consultations—pre-development application discussions—which have gone a long way to ironing out potential issues. So it is not as though the documentation arrives as a complete surprise at the Heritage

Council and we have to deal with it as an entirely new issue. There has been what has been often a very useful preliminary discussion or series of discussions in order to both better understand impacts and also, as I suggested in my introduction, reshape the development in some ways to either avoid development impacts or minimise those impacts in some improved way.

MR COE: Thank you. On a related issue, with regard to the proposed light rail project or the mental health facility, which are two examples which have been cited by the minister as being appropriate or possible projects for which this bill might be applicable, do you believe that the current Planning and Development Act and the processes for amending the territory plan and getting DAs approved could facilitate the construction of those two projects?

Mr Marshall: I have the view that the existing planning and heritage system has not, in a sense, been the cause of unreasonable delay in projects in the past. It may well be that the Heritage Council has expressed a view not supportive of certain developments, which in a way could slow down government or private sector thinking about particular projects while the nature and form of developments are reconsidered, but of course there is a pathway through that for projects which are of major significance to the territory, through the call-in power the minister has under the Planning and Development Act. When we receive development applications, we operate within a strict statutory time frame which does not allow us to linger over our advice. We have to provide our advice within a relatively short statutory time frame. So I do not support the argument that the Heritage Act or the Heritage Council is a delay or a drag on projects.

I think there might have been another part to your question which I have now forgotten.

MR COE: I think you have pretty much covered it. The question was pretty much about whether, under the current regime, these major projects can still be facilitated. To that end, I think you have covered it.

Mr Marshall: Specifically, with regard to the mental health facility, I have not looked closely at the footprint of that new facility, if it exists. But I understand that it involves an existing facility which, at first blush, would not appear to have any potential heritage impacts or problems. I suspect that if that proposal was lodged today, the Heritage Council's advice would be a very quick turnaround and would say: "There are no heritage issues with this place. There are no objections to this particular development proceeding."

Northbourne Avenue is a much more complex proposal, simply because it involves potentially a very large footprint in the sense of development adjacent to as well as on the median of Northbourne Avenue. In that case, and I think it is well known, there are both some existing registrations on Northbourne Avenue and also a range of nominations for potential heritage places on Northbourne Avenue, which, depending on what is proposed, would shape the nature of the council's advice and the extent to which at this point it could be definitive or would have to be qualified.

MR COE: So it would be fair to say that, with appropriate time and appropriate

resources, the Heritage Council could review the heritage issues along Northbourne?

Mr Marshall: I believe so—certainly. It is also fair to say that an appropriate investment of resources and expertise by a proponent can do a lot to help projects feed their way through the development process. If proponents engage with heritage issues early, if they engage good expertise to advise them as consultants as part of their project team, if they do the necessary due diligence work, essentially, for heritage, and if they explore options and minimise or avoid impact—all of that work is part of what I would call good planning. And if that package is brought to the Heritage Council, and if the council is briefed along the way, I suspect a project would have a much smoother path than if those qualities were not present.

MR COE: So given that tracks for light rail are not due to be laid until 2016, there would be an appropriate lead time for the Heritage Council to review heritage issues along Northbourne?

Mr Marshall: I think we are yet to understand the full footprint, if you like, of the development. Is it just tracks? Is it stations? There is also development adjacent to Northbourne Avenue. Council responds in pretty quick time frames, to the best of its ability, providing advice to not stop development but promote sympathetic development—development which is going to respect heritage values, keep heritage values, but still, usually, allow development objectives to be met, in some way at least. Council is very responsive, and it responds in reasonably quick time frames where it needs to, for developments large and small.

MR COE: Thank you.

THE CHAIR: Mr Marshall, just before we conclude, it is probably worth asking your colleague Ms Gurnhill if she has anything she would like to add for the committee.

Ms Gurnhill: Thank you for the opportunity. No, I do not wish to add anything at this stage, thank you.

THE CHAIR: Thank you, Ms Gurnhill. Thank you, Mr Marshall, for your time this afternoon. The secretary will send you a copy of the transcript over the next few days so that you can check for any transcription errors. The committee will now take a short break and resume at 2 pm.

Sitting suspended from 1.30 to 2.01 pm.

ANDERSON, MR TOM, Chair, Weston Creek Community Council

THE CHAIR: The committee will now welcome our next witness, Mr Tom Anderson, from the Weston Creek Community Council. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table, the pink card. Can you confirm for the record that you understand the privilege implications of the statement?

Mr Anderson: I do, thanks, Mr Chairman.

THE CHAIR: Would you state your name and the capacity in which you appear today?

Mr Anderson: Yes, my name is Thomas Griffiths Anderson and I am the Chair of the Weston Creek Community Council. I appear on behalf of the community council.

THE CHAIR: Mr Anderson, the committee has your submission. Would you like to make an opening statement?

Mr Anderson: Thank you, Mr Chairman. Thank you for the opportunity to come along. I am not a planning expert, but I have concerns that relate to process in all of this. I would say that the bill has been brought in with what I would term almost obscene haste. There has been no effective consultation on it. I think this hearing has been an afterthought after public criticism was raised by the community through a number of associations.

One of the normal meetings we go to with ACTPLA is the planning and development forum. We were given less than 24 hours' notice that we would be discussing this at a meeting. I think the email arrived at 5.18 pm and it was for discussion at 4.30 pm the next day. Included in that email were 58 pages of a bill and 68 pages of explanatory memoranda. That is what I mean when I talk about obscene haste.

The council does not understand why the Symonston mental health facility is included in the bill. We would have thought that if that was important it should have been isolated and then the bill could have been discussed on its own merits. I am not quite sure why that has been done.

From our point of view, it concentrates the power in the minister for planning of the Legislative Assembly. It limits public consultation. It takes any appeal rights away. It merges planning and politics, and that is a concern. The decision-makers then are not planners. The bill, in our view, really opens up the potential for corruption by bringing the two together.

The Planning Institute of Australia, which I gather will be appearing later, says there is no need for the bill. We have some points to say that the legislation is vague. Mention is made of the call-in powers. They remain in place. Again, the haste in putting all of this together is worrying. I will leave it at that, thank you.

THE CHAIR: Thank you, Mr Anderson.

MR WALL: Mr Anderson, one of the concerns you raise in your submission is the concentration of power within the Legislative Assembly, primarily with the minister himself, in the ability to use these provisions. What are some of the fears of that concentration of power that you and the community council hold? What are the potential impacts you could foresee?

Mr Anderson: The impacts are that once you have a majority in the Assembly, any proposal could be put forward and passed by the Assembly. It depends on the make-up of the Assembly. Usually in the realm of politics, party politics dictate what the policy is, and that is the concern we have when you bring that down to a very local level.

DR BOURKE: But surely if a party in the future had a majority in the Assembly they could bring in a piece of legislation to do that anyway.

Mr Anderson: Yes.

DR BOURKE: So this piece of legislation does not make any difference as to whether a party has a majority in the Assembly or not.

Mr Anderson: It does. I beg to differ.

MR COE: As to the use of those powers, you cited other examples within New South Wales. Do you think we would be subjecting ourselves to creating opportunities for these powers to be abused?

Mr Anderson: I think it opens the potential for that, and that is what we have said.

MR COE: Firstly, I congratulate you and the other community councils and volunteer organisations for putting in submissions so quickly to this hearing. It is disappointing that this hearing has had to be called so quickly. An important point to note is that under what is proposed, the Assembly does not have any powers to approve something; the Assembly only has powers to disallow an approval the minister has already given. So the power rests almost exclusively with the minister and, in turn, the government of the day which commands the numbers.

Going to the substantive issue of the bill, do you believe there is a need for the fast-tracking of territory plan variations at present or is the current process in terms of the time frame it runs over appropriate?

Mr Anderson: If you take the two together, we do not like the call-in powers, but the call-in powers, in fact, work and they have worked where the community has been of a certain view and has talked to the developer. The example of that is in Bruce where the community were against a proposal in the initial case. They came together with the developer, who came forward with a different proposal which everyone was happy with and the minister used his powers. That is a good outcome.

In relation to others where you take away appeal rights, I think it is a sad day when appeal rights go.

MR COE: Does the community council get notified when territory plan variations are in draft form?

Mr Anderson: We get an awful lot of information from ACTPLA and I am not a regular attendee at the ACTPLA meetings. But they keep us across development applications. We receive every week what the new ones are. As to territory plan variations, I cannot say. I would expect so, but I cannot say.

MR COE: Given the community council is notified of development applications and perhaps other legislative instruments, when was the first time the council was notified about this project facilitation bill?

Mr Anderson: I cannot give you an exact date, but I would say that it was through an email from Minister Rattenbury.

MR COE: That is presumably Minister Rattenbury in his role as a Green. He is not the minister for planning. So is it possible that the first correspondence from the government, either from the planning minister's office or from ESDD, was that email inviting you to that briefing?

Mr Anderson: I cannot be categorical, but I think the answer to that is yes.

MR COE: Are you able to double check that?

Mr Anderson: I can check that. I will get back to the secretary.

MR COE: It would be good to know.

Mr Anderson: I will check the first time we were notified, and I will forward that to the secretary.

MR COE: That would be great. Thanks, Mr Anderson.

DR BOURKE: Mr Anderson, in your statement you said that the amount of time for the community to consider the bill has not been enough. What would you describe as an appropriate amount of time?

Mr Anderson: I would have thought for a bill of this magnitude with the powers it has at least 60 days from the time it was introduced to the time it was debated—prior to it being introduced, even—to allow communities, the people and the associations time to look at it and come back with suggestions as to (a) whether they support it or (b) some suggested changes to it. It just has not been possible in the time frame. I think we received it around about 4 April, the night before the meeting. At that stage there was no indication that there would be this hearing. It is my understanding that the hearing was announced some days later. And the time of that from today is about two weeks. That is my rough count, and that has included Easter in the middle of it.

DR BOURKE: A couple of witnesses earlier this morning described the ACT planning system as cumbersome. Do you concur with that?

Mr Anderson: I am not an expert on the system. I would leave that judgment to the experts. I know that it works, but how well it works is a question for the experts. I have been involved in it in some ways. The use of call-in powers in Bruce was one. It is just that we have an investment property in that area.

DR BOURKE: Tauss Place?

Mr Anderson: Yes, so that is how I am across all of that, and it worked there. But you hear statements from time to time about the appeal process and how it goes on and on and on, and developers complain about that. But, on the other hand, people also complain about the ACAT process and that if they ever want to go through the ACAT process they come up against developers and planners and lawyers and they are by themselves, and it is very challenging. It is very demanding. It is not an easy experience for them. I will leave it at that.

DR BOURKE: Coming back to a previous question I asked about political involvement in the planning process, you were quite down on that in your earlier evidence.

Mr Anderson: Yes.

DR BOURKE: But you bring up Bruce as an exemplar of the benefit of the call-in powers where the minister used his political opportunity to call in that project. Do you not think that contradicts the evidence you have given previously?

Mr Anderson: No, I think that is a good use. I think any use where everyone agrees is a good use of a minister's power.

DR BOURKE: There was an objector to that development who did not think that that particular spot was a good idea.

Mr Anderson: I was not aware of an objector.

DR BOURKE: I think it was the tenant who was considering moving, perhaps. But those commercial interests can become involved in planning processes as well. But just because you agreed with the outcome, it does not necessarily mean that it is good to have political interference in planning decisions, which you have previously thought was a bad idea.

Mr Anderson: No, I would not say it is a contradiction. You will always find in these cases that it is always one group against another, and that is where the conflict comes in.

DR BOURKE: It is just that there is that issue within the community of some people wanting to do something while other people do not want them to do it and, as you say, it then can become a political issue. Often members get representations from people saying, "Can't you do something about this?"

Mr Anderson: That is the democratic process of going to your local member to see if they can assist.

DR BOURKE: People want their members to be able to do something, and that is what this bill would enable them to do—to vote in the Assembly on whether a proposal goes ahead or not.

MR COE: With respect, Dr Bourke, they cannot vote in favour; they can only vote to disallow.

DR BOURKE: I think Mr Anderson is here to give evidence, Mr Coe, not you.

MR COE: I think it is important you do not mislead the witness.

DR BOURKE: I am not misleading the witness.

THE CHAIR: Members, it is not a debate. Let us ask the witness more questions. Mr Anderson, in relation to your concerns in your submission, the second para talks about the council's concern that the bill will bypass the current layered process of consultation. In response to a question from Mr Coe the other day, the minister responded that the running of the process is separate but concurrent. So people can comment on the DA and also comment on the draft territory plan variation and can do it at the same time. It is not just information about the land use zoning that normally occurs. When you are doing a draft variation, for example, it is normally just about the zoning. This new processing indicates that you will have information about the development application at the same time so that community councils, for example, will be more informed about the end result of the process. Do you have any comments in regard to that?

Mr Anderson: I do not know enough about the detail of that.

DR BOURKE: It was certainly an advantage expressed by the Planning Institute, as I understood it this morning, that having the environmental impact and all those assessments done first actually provides more information for people, and that this will be a benefit for other developments as well.

Mr Anderson: If they were all done together and then presented, yes, it is, because it is a package then and you can see the package.

THE CHAIR: Thank you, Mr Anderson, for coming in. I also respond to earlier comments from my colleagues—it is great to see the community councils being involved in this process, and we look forward to hearing from the other community councils.

Mr Anderson: Thank you.

The committee suspended from 2.18 to 2.33 pm.

STEWART, DR JENNY, Chair, Woden Valley Community Council

THE CHAIR: The committee will resume the hearing into the bill. The committee welcomes our next witness, Dr Jenny Stewart from the Woden Valley Community Council. Before we begin, can I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table. That is the pink card. Could you please confirm for the record that you understand the privilege implications of the statement?

Dr Stewart: Yes, I do.

THE CHAIR: Thank you. Would you like to make an opening statement to the committee?

Dr Stewart: Yes, I am appearing before the committee today to offer the council's comments on the bill. I might start by giving a brief summary of the points that I made in my submission. Then, of course, I am very happy to discuss those points further. I guess the main issue that we raised is that the bill distorts the planning system, which is most unfortunate because we see that it is already out of balance.

The way the bill does this distorting is that, we believe, it exacerbates conflict of interest which is inherent in the institutions of planning in the ACT. Essentially, the government combines the roles of developer, planner and regulator. It combines these roles to an extent that is not paralleled in any other state or territory. We believe the justifications for this bill—that everyone else has done something similar—do not really apply.

The second point is that the bill gives the executive—not the parliament; the executive, that is, the planning minister and the cabinet—excessive and unaccountable powers over development associated with projects of significance or special precincts. Even the role of the Assembly is watered down because all the Assembly can do is vote to disallow the instruments that give effect to the proposed fast-track legislation. I guess that they are two key points about how the institutions of planning are unbalanced as a result of this bill.

Just very briefly, the remaining points that we make in our submission I think possibly have been made by others, but I will repeat them very quickly anyway. The bill allows very little time for public consultation in relation to declared projects or precincts of significance. This is a further example of the unbalancing of the system. Clearly, that gives the community, and is intended to give the community, very little time to actually come to grips with whatever is proposed.

In respect of the next point, the constraint on appeal rights, we make the point in the submission that when appeal rights have been invoked in other planning-related situations, it is not uncommon for ACAT to find in favour of the appellant because mistakes have been made. So you can see that this particular bill, in constraining appeal rights to a restricted time window, raises the risk of errors being made. When errors are made in planning matters, the consequences are not just in the legal realm; they take the form of bricks, mortar and concrete and they are there for a very long time.

The final point is that, as I understand it, one of the rationales for the bill was that it is going to make the minister's call-in powers more transparent, an objective I think which most people would endorse. However, on our reading of the bill, as put forward, it does not really do this at all. It simply adds a layer of opacity to current practice rather than making the call-in powers more transparent. The problem with the call-in powers, the lack of transparency, should be dealt with by appropriate amendments to the legislation, but certainly not this kind of amendment.

Finally, I want to make the point that it is not just the community, as represented by community councils and others, that is frustrated with the existing planning system. I think just about everybody is, including, I might add, some developers. So we believe that in looking at this perhaps more deep-seated problem, urgent attention should be given by the government to investment in ACTPLA, the Planning and Land Authority, or what is left of it as a quasi-independent agency.

This investment by enhancing the expertise and, above all, experience of planners in the ACT we think would do a great deal to overcome some of the difficulties that people experience with both the design and the operation of the current system. So we have tried to make some practical suggestions as part of the submission as well. That is all I would like to say at this point.

THE CHAIR: Thank you, Dr Stewart. I will kick off and go to your statement about frustration with the planning system. I think you said that it is not only shared by yourself as a community council but also by developers. Can you give us some examples of these frustrations as you see them?

Dr Stewart: Certainly in discussions with architects and developers, they feel frustrated because the planning system is highly technical. It is often difficult for them even to understand some aspects of it. It is very complicated and, of course, it can be time consuming. The point we want to make is that the best response to that complaint is emphatically not the current bill but rather perhaps to have a fresh look at some of the thorny bits of the Planning and Development Act and see if in a consultative way—in other words, involving all the stakeholders—some agreed improvements cannot be arrived at.

For the community, certainly we find the system very difficult to relate to. Our concerns revolve around public consultation. Because the way the system works is often fragmented, uncoordinated and difficult to understand, that makes it in turn very difficult for us as concerned citizens to engage in the way that we would like.

The other area of difficulty is more in the administration of the planning rules. Many citizens who find an unwelcome development is proposed to go perhaps right next door to them, find that when they try to meet with or talk to developers about what is planned, the goalposts keep shifting. Developers amend their development application in ways that are quite difficult for the community person or citizen to follow and to respond to. I think you will find plenty of evidence of that in the proceedings of ACAT. I guess they are some actual examples of the ways in which the current system lets people down.

THE CHAIR: You talked about the 30-day consultation process. What do you think should be the amount of time available for—

Dr Stewart: Double that at least. I know some people would say that it should be even longer. For myself, I think that public consultation does not require a huge amount of time but it does require, as I have said, expertise and experience on the part of those who are putting the proposals forward so as to facilitate people's engagement with those proposals. So it is a two-way process, obviously, and even a modest extension of the time provided for the processes to be well handled I think would probably go a long way to meeting people's dissatisfaction. But as I have said, that is only one, and certainly not the major, deficiency of the current bill.

THE CHAIR: Finally from me, you have mentioned the relationship with the minister's call-in powers. Earlier on we asked another witness about where we have seen community councils ask ministers to use their call-in powers, especially to stop developments. Do you have any comment there?

Dr Stewart: Yes. I think it would be wrong of me to say that the call-in powers are fine when they are exercised in favour of the position taken by a community council but they are not fine when they go against that. There is an arbitrariness around the call-in powers. I think any objective assessment would say that there is a problem there. The fact that they can go either way and nobody quite knows what is going on quite often—I sometimes think the minister does not always have a complete grasp of the situation—I think underpins the point that call-in powers are not a good way to resolve conflicts about development matters.

DR BOURKE: Further in relation to the call-in powers, you said that there was a lack of transparency. What do you mean by that?

Dr Stewart: I guess it goes to the point I was outlining, that it is difficult to know what criteria the minister might use. It is difficult for people concerned with the issue to know who has actually been talking to the minister and what impact their ideas or submissions might have had. It is has the effect, we think, of removing the problem from the public arena, which it is designed to do. But the way it does it is less than satisfactory.

We have had the experience on Woden Valley Community Council where we have been very frustrated with the decision-making that has taken place. We have asked the minister to exercise his call-in powers in a way that we would see as being favourable to a good decision only to be told that the minister was not going to do that, or that it was not appropriate, but not really knowing why that was the case or, if a reason was given, it was often couched in very technical language. The way those powers are used, I think, does nothing to encourage people to believe that the planning system is working well. It can be fairly capricious.

DR BOURKE: You understand the level of accountability that is required by the minister when those powers are used, both to the Assembly and ultimately through the courts. What steps do you think could be taken to make them more transparent than they are now?

Dr Stewart: I have not looked at that in sufficient detail to talk about the accountability provisions that you refer to. All I can say is that they do not really operate in a way that makes the exercise of those powers transparent to the community. It is not just the powers themselves but the way they are exercised that is the key issue, not subsequent accountability provisions. That would be more of a personal view from me. It is not an issue that I have looked at in sufficient detail to say that this or that in relation to the broader framework should change. Generally, accountability in my view is a backstop or a safeguard. It does not, particularly in these kinds of matters, operate, I guess, to smooth the path of decision-making. I think that is a prior step that needs to be taken and thought about.

MR COE: I think it is worth noting that the call-in power cannot be appealed to any court. With regard to territory plan variations as they presently operate, have you, through the council, been through any variations that you have paid particular attention to?

Dr Stewart: Yes.

MR COE: In relation to that process that you have been through, in contrast to what has been proposed for special precinct areas, how do you feel that the current system works for changing the land use? And if there were to be improvements to that system, are you able to articulate what they might be?

Dr Stewart: The current system is better than what we will find in the matter of special projects, but it is certainly not ideal. It does enable community groups such as the Woden Valley Community Council to appear before the Assembly committee and to have a say about the proposed territory plan variation. That is, I guess, a reasonably useful experience, but we have had absolutely zero success with it, because the verdict is pretty much pre-ordained. Sometimes it varies a little around the edges, but not very much.

Clearly a rezoning or territory plan variation is an important decision that goes with development applications, but discussion of what might need to be done to give effect to an overall development application should perhaps be more a part of the public consultation process. There is an important safeguard there with the role of the Assembly; I would not want to see that done away with. But at the moment there is quite a separation in relation to what is announced for a particular area.

I am thinking now of draft variation 259 to the territory plan, which goes back a while now, which was intended to give effect to rather wide-ranging changes to the area of Woden Valley to the north of Launceston Street, which was a recreational area and which was rezoned. While we had our say, when it came to the point of the actual draft variation being discussed in the Assembly we were not able to articulate through that process the very real issues relating to recreational space for citizens and the fact that what was changing was the entire character of that area and that that change would take place over a number of years. What we have now is the progressive erosion of those recreational facilities. The draft variation was approved long ago; the community is still pretty much shut out of the decision-making.

I am sorry I have not given you a cut and dried answer, but that is how I see it.

MR COE: That is fine. I know it is a difficult question, especially for a volunteer, but are there any improvements that you can easily identify as to how that process could be either more transparent or more inclusive—in terms of final outcome, not just the consultation?

Dr Stewart: What we have argued for over the years, again without success, is for the master planning process to be taken much more seriously. There was a master planning process for the Woden town centre area that produced a document in 2004, and the subsequent draft variation, as I have just referred to. But it was a hollow exercise, because the master plan—that one and others as well—had no force of any kind.

If you are asking about what I would say should be done or could be done better or differently in order to improve the process, I would say it would be about doing more with the master planning process. We now have a revisiting of the master planning for Woden town centre and also for the Mawson group centre, but there would be many aspects of that that have been quite unsatisfactory, and we are still just in the preliminary phases of that exercise.

I would certainly see that master planning and possibly other planning—I know that some of my colleagues from other community councils have suggested an appropriate form of precinct planning to accompany master planning—might be a way forward as well.

MR COE: Thank you.

THE CHAIR: Further questions, members?

MR WALL: Dr Stewart, in your submission you talk about a possible exacerbation of the existing conflict of interest that the government has with regard to planning and development in the ACT—that they control the land, process the land, and potentially also have this new power. What impact do you think that has on the confidence and the competitive nature of the construction and development sector locally?

Dr Stewart: I do not think it is good from the point of view of the development sector for there to be the current muddle of roles that takes place in the ACT. I gave some examples in the submission. We see the government as a developer via the Land Development Agency, and then other agencies develop the holdings of land that they have. The territory government has powers which are obviously way in excess of any local government, so it can do more in relation to planning than can local governments. We have already talked about the overweening role of the executive.

I really do not see how you are going to get good outcomes from that kind of system. What we know about governments—some say not a lot or not enough—is that they work best if there are reasonably clear separations of roles. What we tend to see in the ACT is government panicking a bit in the current climate, with the downturn in the economy, on the one hand, and also having ideas about where Canberra should go as a city—which, I have to tell you, are not shared by, I would say, a substantial majority of citizens of the ACT.

It is almost as if government has too much power for its own good. People in government might well say, "We would question that; it does not feel powerful from where we sit." But what tends to happen in a system like that is that it works in a very haphazard and often piecemeal kind of way, where some developers can push something through and others cannot or do not want to. And the quality of what is done is often wanting. I think it is probably in the interests of the development industry as a whole for government to take a firmer line on the quality of development—raising the level of the playing field, if I can put it that way, in a way which affects them all.

Somebody said to me just recently that a lot of the infill and densified development that we have seen around Canberra of late is bog standard. It is not that great. Surely it should be part of government's role, if the governance of the system is better arranged, to actually say, "We think Canberra deserves something better." I know that there are architects who really want to do better work, but they are shackled by very a short-term financial outlook, and that is most unfortunate.

MR WALL: Do you think that the existing planning system as it stands is rather prescriptive in how buildings should look? Do you think that is also an area that needs to be assessed in trying to lift the quality of the built form that is achieved?

Dr Stewart: I do not think it is particularly prescriptive if you look at the way it works with code, merit and impact track developments. In some respects, almost anything goes. It all comes out looking the same, because that is just the cheapest way to build. But when the present legislation first came in and when we were talking about that legislation, one of the big selling points was that it was going to be outcomes driven rather than saying, "You have to have a building that is no more than X metres high; and this, that and the other has to happen." It was going to be very prescriptive. The unfortunate thing is that we have kind of ended up with the worst of both worlds. We still have a fair bit of prescription in there, as builders and developers will tell you, but on the other hand, there are often gaps and holes in the prescription which you could literally drive a truck through. That really alarms people who are living next door to a proposed development; they really do not know what the rules are.

The current legislation and the way it works, as I said, are far from ideal. It should be possible to get a better trade-off between the prescriptive aspects and the outcomes aspects of the system. I guess that is a debate for another day, but it really does go to the more fundamental problems that we have in Canberra with our planning system.

DR BOURKE: So you think it should be more prescriptive?

Dr Stewart: I do not think it should be more prescriptive; I think it should possibly be prescriptive in different ways. Some of the detailed criteria are perhaps not the key ones. The other aspect is that it is possible to trade off criteria—for example, parking places that might be prescribed if the developer does something in some other aspect of the development that is possible under the merit track and also the impact track. It is never made entirely clear how far that can go. Very often we find that developers, particularly those that are prepared to push the envelope, can significantly undermine

aspects of current prescription which we feel are important. So there are those two aspects. Sometimes key things are not prescribed properly; at other times, trade-offs are allowed which tend to undermine their significance as rules governing development.

THE CHAIR: Any further questions?

MR COE: No, thank you.

THE CHAIR: Thank you, Dr Stewart, for coming in this afternoon. The secretary will get a copy of today's transcript over to you for you to see if you need to make any changes for the *Hansard*. We have our next witness coming in at 3.10, so we will take a short break.

Short suspension.

EDQUIST, MR JOHN, President, Griffith Narrabundah Community Association
DENHAM, AM, DR DAVID, Secretary, Griffith Narrabundah Community Association

THE CHAIR: We will resume the public hearing of the Standing Committee on Planning, Environment and Territory and Municipal Services inquiry into the Planning and Development (Project Facilitation) Amendment Bill 2014. Before we begin, I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table. That is the pink statement there. Could you please confirm for the record that you understand the privilege implications of the statement?

Mr Edquist: I understand.

Mr Denham: Yes, so do I.

THE CHAIR: Thank you, gentlemen. We have the submission from the community association. Would you like to make an opening statement?

Mr Edquist: Thank you. First of all, let me thank the committee for the opportunity to give evidence. I propose to speak very briefly and then ask Dr David Denham, the secretary, to say a few words. Then I suggest that the committee can ask any questions they might have about our submission.

THE CHAIR: Thank you.

Mr Edquist: I hope you have all had the opportunity to look at our submission. You are probably suffering just as much as we are in the incredibly short time available. It is certainly a matter of regret for us. As I say, I imagine you are feeling very stressed as well. It has made it very, very difficult to prepare submissions over the Easter period. I have just come back at 9.30 last night from a family wedding in Tasmania. David was down in Sydney. Gary Kent has been in Melbourne. People have been all over the place—out of town—and email systems do not always work when you are not using the system you normally use.

If it was the executive's intention to make things difficult, they have succeeded at least in part. But I would note that community consultation where the community does not get the opportunity to express its views is not really consultation. I think it is a pity in a way, because I do not think it enhances the dignity of the Assembly that the executive is using it in this way. It is not really appropriate.

We appreciate the political constraints, but I think it would be better for everyone concerned if the consultation period could be extended in some way so that real consultation could take place. We are not opposed to the bill entirely. There are good elements in it. We think that with amendments it could be made to work well; so I do not want to appear just as someone who has come here to say, "No, no, no." But I do think that it does need substantial amendment.

Turning to the bill itself, rather than getting into the sort of detail we discuss in our submission, at a high level I think the real problem here is that the executive

obviously feels there is a major problem with the current planning process. But they have not really spelt out what it is. There are a few references to rigidities in the system. So it is very hard to be sure that the solution proposed is the right one if you do not know what the problem is. We would find it certainly much more helpful if the government could tell us what the difficulties were, and then we could all work together on getting the optimal solution to it.

In relation to the existing planning system, it is not as if the whole planning system or the appeal rights and the need to consult with people sort of just appeared out of nowhere. Everything in the existing planning system was legislated by an earlier government for some reason or another, usually because it seemed a very good idea at the time. I think it is really incumbent on Mr Corbell if he wants to replace it to explain what is wrong and how these other governments got it so terribly, terribly wrong.

Again, it is not as if Canberra is out on its own, that it is the only jurisdiction in Australia where something like the ACAT exists or the AD(JR) Act. These are pretty common arrangements. So I really think the onus is on the government to demonstrate that these arrangements put in place by earlier governments have been ill-judged. Then having done that, the government needs to explain to us why this bill is the solution to the problem. They have not done that. They are just trying to rush, rush, rush.

We have had great difficulty in getting sort of on top of the whole thing. I am not sure if we have. It is a very long bill. It is very complicated. There is an awful lot of work involved here. To break the thing down into smaller parts, perhaps, or to take longer and step people through it would certainly help the whole thing.

Again, I note that other jurisdictions are not going down this path, in particular with this idea of replacing project-specific legislation. In Victoria when they wanted to build CityLink they passed a special CityLink act. In New South Wales they do the same sort of thing. That is the way these things have been done for yonks. The earliest one I remember is the Olympic Dam indemnity legislation in South Australia. I am showing my age. It was when I was working in government 30 years ago.

But that is the usual way these things are done. We are proposing to step out into the unknown and pass some sort of global all-encompassing bill that will enable governments to handle any kind of project that comes up without passing an enabling act. You could say that each enabling act is different and that this will be more uniform. Perhaps, but I think you are going to have to give away more than you gain by having an act that will be an act for all seasons.

Again, that is something the government really has to demonstrate, that this is the optimal mode. I would like to see evidence. Basically, what do they know in Sydney and Melbourne that we do not know here? I am a bit doubtful when I am told that Canberra has found a brilliant solution to a difficult problem. I think, "If it is that obvious—" yes, anyway. If you gentlemen have views on this, we would welcome hearing them.

I would also like to commend to your attention the submission submitted by

Ms Margaret Fanning, who is one of our members. We fully support it. We would have included it in our submission, except that she is down at Broulee and she is having email difficulties. She just did not get it to us in time for us to incorporate it. But we think that is an excellent submission that raises a number of the issues I have just touched on.

David is going to talk more about the act and some of the concerns with it. I would like at this stage just to touch on the fact that we think there are very weak criteria for determining what a special project variation and a significant project are. We think it would be better if the current words were withdrawn and replaced by some kind of public interest test where the government had to do a cost-benefit analysis and publish it and was not allowed to duck out by saying, "That is all confidential and in confidence, commercial in confidence."

If you want to play that card, you just have to go through the normal planning regime, because there are other options. If they want this speedy thing, put the figures out there and keep them up there on a database that is there for years afterwards so people can see that the minister said that this was going to be worth $70 million to us. In fact, it was only worth $20 million or something. But the fact that there would be a public statement there for years to come might act as some kind of constraint.

At the moment, with the lack of appeal provisions you would like to think that the government would only bring forward projects that everyone agreed were major. But at times you cannot be sure, particularly when there is going to be no test in the court or the ACAT saying, "Do not be ridiculous, minister. This is not a major project." I guess that is our other concern. The government really needs to explain why we are abolishing appeals to ACAT and the ADJR in the Supreme Court. These provisions were introduced by earlier governments for very good reasons.

ACAT is supposed to be quick, cheap and convenient access to people who have got problems with what the government does. If the ACAT is taking too long, I would recommend looking at the ACAT act and figuring out what the problem is. But I think the ACAT is an excellent mechanism. Again, it is something that all the states have; so it is not a one-off for Canberra. Everyone has got their administrative appeals tribunal.

The Administrative Decisions (Judicial Review) Act basically codified a whole lot of common law rights. Again, that is why it is there. Fixing up the time that the Supreme Court takes to issue rulings is a much more difficult problem, I realise, but part of it could be resolved, I suspect, by resourcing the court more so we had more justices. I think that is—but anyway. Rather than just throwing them out because there are problems, I think we need to ask, "What are the problems here?" and fix the mechanism. At this stage I will hand over to David.

Dr Denham: Thanks, John. I would like to say one thing which I think is good about the proposed act, and that is that it allows and encourages the development application to be submitted at the same time as the lease variation submission. I think this is a very good thing. It certainly would have speeded up the Brumbies case. The first thing was the zone change from whatever it was—accommodation, recreation—to RZ4. That went through, and then there was the development application.

Perhaps it should be mandated for some of the major projects that the development application goes in at the same time as the lease variation because then you know what is actually being proposed. If you do not know what is being proposed, it is a bit difficult to know. It is better consultation if you know those two things.

Having said that, when I first read the press release that Shane put out, I thought, "This is really good. We are going to abolish the call-in powers for all but these major projects." I thought, "This is what we really want." The Assembly is going to deal with the major projects and the call-in power is going to go. But that is not what is in the bill, as you well know. The call-in powers are still there.

This is really of concern, I think, to all community groups—the call-in powers—because the minister can just say, "Right, this is in the community interest; tick, tick, tick," and it goes through. The Brumbies is a good case of that, because it did not comply with the planning guidelines for density. It did not comply with visitor car parks. But it was good for the Brumbies and it was good for policy; tick, off it goes. It is good for the community.

So I think there need to be some definitions or some guidelines which the minister has to follow before he or she uses call-in powers. I think it would be better if they went altogether, but I do not think that is a possibility. But that is certainly something which is of key concern to us.

I reiterate the second concern because again it comes back to the definitions in the act. John did mention this, but if you look at the clause 85H(d)(2), it states that one of four objectives must be complied with. That really, I think, is quite unreasonable, to say that you only need one of four of those things. You really need all those objectives. Those objectives should not really be very different, or different at all, from the proposed section 137I criteria for declaration of a project of major significance.

In that one, I think in the proposed subsection (b) form there, it would be good to put "benefit" in there as well. It makes reference to something being of major significance or of major cultural or environmental significance. It could be, but it could be that you are chopping down all the trees. That is of major social, cultural and environmental significance but it is of no benefit whatsoever. I think that there are a few things like this that could be tightened up in that.

The other thing that can be tightened up is the consultation. All the way through here you have got reference to newspapers and paying money to get things. I think there is one reference to the web. That should be mandatory, that all these things are put on the web and that they are readily accessible, because I think the problem that we might face with this legislation, if it gets through, is that the community do not get sufficient involvement with what is going on. If you want to keep up with this, if it is all in newspapers and you have got to pay for it, that is not good. It is quite expensive and difficult to get these documents and to print them out .

There are a few other little things. For example, clause 89(2) states:

> The planning and land authority may put the plan variation … in writing.

I would have thought it should have been "must put it in writing. There are a few little things like this all the way through which to me shows that—I probably should not say this—it looks as though it has been cobbled together in a bit of a hurry. So I think that is all I want to say right now. It is the call-in powers, the definition, the clarity and the community being enfranchised more and not less as a result of this legislation. I will cease talking now.

THE CHAIR: Thank you, Dr Denham. Colleagues, questions? Mr Wall.

MR WALL: Thank you both for coming. As far as consultation and engagement with the community go, it has always been a sticking point with any community consultation as to whether there is enough or not. You have raised concerns about the proposed changes. Do you have an idea, from either your personal experiences or those of your members, as to what a more appropriate time frame in engaging in community consultations would be?

Dr Denham: We put that in our submission, didn't we?

Mr Edquist: Yes. The bill proposes 30 working days. Our submission recommends that that be changed to 60 working days. I know that is considerably longer, but we are all volunteers in this sector—community groups—so we cannot just drop everything. For instance, I think the next group to appear is the Inner South Canberra Community Council, and Gary Kent, the president there, is unable to appear because he has got work commitments today that he just cannot miss out on. The government can just tell its public servants to go and do something, and to do it in, say, three weeks. That is fine, but we cannot. We have to find the time to read this, talk to other people and so on—particularly in a period like this, the Easter-Anzac Day break, when so many people are out of town or, if they are not out of town, busy at church services and so on. It can be very difficult.

Dr Denham: Were you talking about in the context of the bill or were you talking about in the context of—

MR WALL: I was just inquiring as to your experiences as representatives of a community association—what feedback you have on the current process and what impact you feel that the change is going to have. Mr Edquist has covered some of those points.

Dr Denham: I think it depends a lot on what the project is. If it is a big thing, like something that is presumably covered by this legislation, then that is where there is the longer period. If it is a knockdown rebuild, it should be easier to assess it in a shorter period, I would have thought.

MR COE: Dr Denham, I have a question with regard to your comment at the beginning about what you did like about the bill. I imagine that was division 7.3.2A or 147A, whereby an application may be made in anticipation of a draft plan variation.

Dr Denham: Yes.

MR COE: That is, where a territory plan variation runs concurrent with a development application.

Dr Denham: Yes.

MR COE: For instance, using the Brumbies example, I was wondering whether that section retains your support, given that the territory plan variation process is still independent of the development application process. They are simply separate streams that run concurrently; the territory plan variation could get up but the development application could be rejected. And they are not conditional. The only one that is conditional is the development application, conditional upon the territory plan variation—not the territory plan variation being conditional on the DA. Therefore you could get a territory plan variation up and not the DA, and therefore get a lot of other unintended development applications coming in for that site as well.

Dr Denham: All I am saying is that it would help if you could concatenate them, because then you can see what is being planned in detail.

MR COE: Do you think that the territory plan variation should be conditional on the development application getting approval as well?

Dr Denham: In part of this legislation, if it is a major project, I do not see why they cannot—they should be encouraged to go together. That is really the point I am making.

MR COE: True; that is a major project. But separate to that is this clause 147, which I believe is distinct to the major projects and simply means that a territory plan variation can happen at the same time as a DA. And the DA gets assessed as if the territory plan variation is successful as well.

Mr Edquist: If I understand you correctly, you are putting the question to us that the plan variation should also be dependent on the particular project being proposed.

MR COE: The DA, yes.

Mr Edquist: So if, for whatever reason, the DA was refused for the project, the plan variation would also lapse.

MR COE: Yes, I know. I am asking whether that would have merit.

Mr Edquist: I have not had a chance to think on it deeply, but just off the cuff, that would seem reasonable. Presumably, then, anyone else who had a new proposal for the site would apply again for the process of variation, lodging a DA at the same time.

Dr Denham: But this legislation is to try and speed things up, as I understand it. This gives the opportunity to do that.

MR COE: Yes; that is right. It does speed it up. That is true.

Dr Denham: As you say, the variation of the lease might be knocked back. In that

case, the DA would also—

MR COE: That is right; the DA is conditional on the territory plan variation.

Dr Denham: Yes.

MR COE: But the territory plan variation is not conditional on the DA.

Dr Denham: That is right. I think you just have to take advice from the planning authority about that. You never know, do you? I would have thought that, if you have a good proposal, if it fits in with all these criteria and if you are working with the planning authority, this would be the way to go.

MR COE: 147 is actually the current planning system; it has got nothing to do with all the other criteria. This goes to the complexity of this bill.

Dr Denham: But it does not happen like this now, does it?

MR COE: No, it does not.

Dr Denham: All I am saying is that it would be good if it did.

THE CHAIR: Dr Denham, just off the back of that, the proposal in this bill is that the EIS would be done on the same time line as well?

Dr Denham: Yes.

THE CHAIR: Are you supportive of that as well?

Dr Denham: Yes. You have to have the EIS somewhere in there, so you may as well have it at the front.

DR BOURKE: Previous witnesses have described the ACT's planning system as cumbersome. Do you concur with that or do you have a different opinion?

Dr Denham: Yes. I would say more: I think you are flattering it if you say that.

DR BOURKE: Right.

Dr Denham: It is complex; it is cumbersome; it is very difficult to understand. And this legislation will just make it even more complex. You have really got to have the territory plan on one side and this bill on the other to see what is being changed and where it all comes in. For example, everything in here relates to the things in the territory plan. It is very complicated.

What I would like to see is a system whereby any builder, developer or anybody who wants to build something can go to a map, click on the particular block and section number, and up comes all the regulations that they need to know about that block—whether it is a concessional lease or anything else about it: what the setbacks are, what the solar access is and the whole lot. I do not think that is there now.

Mr Edquist: If I may say so, that would only be of use if what came up had been purged of the curse of the existing scheme, which is all these subjective criteria.

Dr Denham: Yes.

Mr Edquist: The rule says one thing and then says, "But on the other hand, you can do it if it is pleasing, it is reasonable or whatever." There are all these things. What do they mean?

DR BOURKE: We have heard previous evidence telling us that developments are going up that do not look any good but are obviously within these guidelines. How do you drive that aesthetic view through without some sort of negotiation there around pleasing aspects?

Mr Edquist: If ACTPLA or ESDD had a requirement to ensure that buildings were pleasing, I would say it is failing in its mandate, but that is purely a personal aesthetic view, I suppose you could say. I would deal with that by not using terms like "pleasing". I would say that buildings have to match, for example. If you are building in an existing area, I cannot see why they cannot say that if you knock down and rebuild a house it has to match the houses on the street, particularly the ones on either side. If it is in a garden suburb area like Griffith or Narrabundah, they could say that it will have to be red brick at the base, be painted white above, have a tile roof and be no further forward than the furthest forward of the houses on either side. There are all sorts of rules like that that you can put in which are quite quantitative, not qualitative, and yet would serve to stop these large two-storey concrete monsters and so on, which I do not like. I realise that is a subjective view, but I certainly do not like them being put in the middle of a street of nice suburban houses.

Dr Denham: And part of that comes from the definition of the plot ratio now, the way it is calculated. We think that is flawed, because you can have a house that complies with the plot ratio as it is defined now but fills the whole block. This is probably because you have got a big swimming pool in the middle that you do not count.

Mr Edquist: Yes.

Dr Denham: These sorts of things can be done. They can change them. We have suggested to ACTPLA that they change it so that when the plot ratio says 50 per cent, it actually means that 50 per cent of the block is occupied and the rest is not built. But they do not like what we have put up.

THE CHAIR: Thank you very much for your time this afternoon. The secretary will send you a copy of the transcript in a few days so that you can check for any transcription errors.

FORREST, MS ANNE, Deputy Chairperson, Inner South Canberra Community Council
PRICE, MS DEBORAH, Secretary, Inner South Canberra Community Council
EDQUIST, MR JOHN, President, Griffith Narrabundah Community Association

THE CHAIR: The committee welcomes Ms Forrest and Ms Price from the Inner South Canberra Community Council. Mr Edquist is still here as a witness. Before we begin, I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table, the pink card. Could you please confirm for the record that you understand the privilege implications on the statement?

Ms Price: Yes.

Ms Forrest: Yes.

THE CHAIR: Can you tell us your name and the capacity in which you appear?

Ms Price: Deborah Price. I am the Secretary of the Inner South Canberra Community Council.

Ms Forrest: Anne Forrest. I am the Deputy Chairperson of the Inner South Canberra Community Council. I am sitting in for Gary Kent who was not able to get away from work.

Mr Edquist: John Edquist. I am a committee member of the Inner South Canberra Community Council. The Inner South Canberra Community Council is an umbrella organisation. The Griffith Narrabundah association, the Old Narrabundah association, the Deakin residents, the Yarralumla residents and the Kingston Barton residents are all constituent groups. So two members from each group are committee members of the ISCCC. Then we have other members at large like Deborah, Anne and a few others.

THE CHAIR: We have the submission from the council. Would you like to make an opening statement?

Ms Forrest: Just a very brief one, thank you. The process of consultation has been so truncated that it has been almost impossible for the Inner South Canberra Community Council to draw up an adequate submission in the time frame. In fact, a number of items in the submission that has gone forward to the committee require alteration. I would like to ask the committee's permission to resubmit our submission to you in the next couple of days. It is in the form of a PDF document and it is sitting on Gary's computer at home. He has been out of the city; so he has not been able to access it. But he said he would try to do that in the next 24 to 48 hours.

THE CHAIR: Yes, I am sure the committee would be happy with that.

Ms Forrest: One of the alterations that will occur to the submission is in relation to heritage in particular, which is my personal area of interest. One of the things that is occurring because of the introduction of this bill is that those of us who have been

following the heritage process over a number of years are now unaware of what is going to happen with heritage listed precincts and properties as well as those properties that as yet have not even been identified. I managed to hear Duncan Marshall's evidence this morning, and he has adequately covered all of that. But we would like to add that to our submission.

Much of the material in our submission has been drawn from the hard work of people like John Edquist, and that is why he is sitting here. So if you have any questions of us, we will attempt to answer them.

DR BOURKE: Just coming to the consultation arrangements, which is point 1 of your specific concerns with the bill, do you have a proposal for the time that you would consider to be adequate for community consultation?

Ms Forrest: Are you referring to this particular bill?

DR BOURKE: No, I am not talking about the consultation on the bill but the consultation arrangements in the bill, which is point 1 on page 2 of your submission.

Mr Edquist: The Inner South Canberra Community Council has not made a specific proposal. The Griffith Narrabundah Community Association suggested that 30 days be doubled to 60 working days. I do not know if Gary felt that was too long, but he says that 30 days is too short. I guess the ISCCC might be open to negotiation on this point.

Ms Forrest: Yes. From the committee's point of view, you need to understand that these community councils, which are now the umbrella organisations supposedly for consultation with government particularly in relation to planning matters, are all volunteers and we meet officially once a month. A lot of people put in a lot more work than once a month, but if a bill such as this is in front of a community council, there is at least a four-week delay before they can meet again officially and draw up their views on the bill. And that is making it sound very simple. So 60 days at least would be my view.

MR COE: A question I have asked of a couple of the other witnesses is: when did the community council first hear about this bill? Have you formally been asked to provide comment by the government as opposed to the committee?

Mr Edquist: The first we heard about it was probably on 20 March.

Ms Forrest: As I recall—and someone else can correct me if I am wrong here—an email went out to possibly the chair of our council from Minister Rattenbury's office. But, of course, that does not necessarily instantly go to all the other members of the committee. We finally got access to the bill itself and the explanatory statement. That did not happen at the same time either. There has been frantic work in the last two weeks and communication with Minister Rattenbury's office, because we were informed that this was basically a fait accompli and going to the Assembly on 6 May.

Mr Edquist: I think our first meeting after 20 March would have been 8 April, and that was when it was referred to this committee. Basically, we met and talked about it

just after it had been referred to committee. I think it came as a shock that it had been introduced on 8 April. We had no idea that that was the time frame proposed.

Ms Forrest: I think that is when I managed to get a couple of hard copies of it to distribute to a couple of people who possibly had a chance to read through all the documentation. It is still April. It is extraordinary.

MR COE: It was introduced on 20 March and on 8 April the consultation was meant to be done and it was to be voted upon on 8 April. But then it was delayed by this additional month. I note that Minister Rattenbury was in touch with you. He is not the minister for planning. I imagine he was writing in his capacity as a Greens member rather than as a government member.

Mr Edquist: That would be correct, yes.

MR COE: Therefore, has the government, whether it be ESDD, ACTPLA or the minister's office, been in touch with the council to the best of your knowledge?

Ms Forrest: To the best of my knowledge, there has been no communication from ACTPLA or ESDD. I am not absolutely sure there has not been an email communique from the planning minister's office just recently, but I would have to check on that.

Mr Edquist: I do not recall any communications from Mr Corbell's office, but ESDD held a briefing on this as part of the planning and development forum on the afternoon of 9 April, which I attended. So it is not fair to say that ESDD did not do anything, but again—

Ms Forrest: It was the planning and development forum.

Mr Edquist: Yes, it was the planning and development forum but, again, they are working on a reasonable schedule. They obviously did not change their timetable for briefing people simply because the government had a time frame. I do not know if Mr Corbell had told them his time frame.

MR COE: So the bill was presented to the Assembly first on 20 March and then it was to be voted upon in three weeks after that. Prior to the bill being presented to the Assembly on 20 March, the council had not been asked to provide comment?

Ms Forrest: We knew nothing about it.

Ms Price: I can say there was definitely nothing before 20 March.

Ms Forrest: A lot of these communications go to the secretary.

THE CHAIR: Thank you very much, Ms Forrest, Ms Price and Mr Edquist for coming in. The secretary will get a copy of today's transcript to you.

Ms Forrest: Yes. Have you agreed to us resubmitting our submission with just a few corrections to it?

THE CHAIR: I am sure I speak on behalf of the committee by saying we would be happy to receive that updated submission.

Ms Forrest: Thank you.

COGHLAN, MRS ROBYN, Chairperson, Belconnen Community Council

THE CHAIR: The committee will now welcome our next witness, Mrs Robyn Coghlan from the Belconnen Community Council. I remind you, Mrs Coghlan, of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table, the pink card. Can you please confirm for the record that you understand the privilege implications of the statement?

Mrs Coghlan: I do.

THE CHAIR: Would you tell us your name and the capacity in which you appear today?

Mrs Coghlan: Robyn Coghlan. I am the Chairperson of the Belconnen Community Council.

THE CHAIR: We have your submission. Would you like to make an opening statement to the committee?

Mrs Coghlan: As you can see, it is a very slim statement, and that highlights the fact that, as an organisation, we found we did not have the time to discuss as a group all the issues listed here. We have raised them as concerns, and the reason we have not done something more comprehensive stems back to the discussion with the previous speakers about the timing of the presentation of the bill and the fact that initially it was intended to pass the bill without actually having any community consultation. It was not until 8 April I think when we were sent papers for the next day's planning and development forum. We had a very brief overview presentation on the afternoon of 9 April in relation to what the bill was about.

Not everybody has the time or inclination to actually go in-depth into the bill or the explanatory statement. I have discovered that a lot of people regard legislation as anathema and they just do not go near it; so the burden of trying to understand what it is all about falls upon primarily a few people. But, at the same time, the entire committee has to have the opportunity to have a say on it.

From our perspective it has been very difficult to get a statement that is comprehensive and that everybody supports, so we have just listed the issues we think really need to be examined in depth and clarified for the reasons we have stated there before the bill is actually passed.

THE CHAIR: Thank you very much, Mrs Coghlan. A number of witnesses have made comments with regard to the bill whereby the processes in the planning process come together in the period for the lease variation to go ahead; the development application and also the environmental impact statement occur at the same time. If the lease variation does not go ahead, of course, the development application would not go ahead in that process. Do you have a view on that process?

Mrs Coghlan: I think it is fraught with difficulty in the sense that so much is trying to be done at the same time. First of all, it seems to me that there is a lot of time, effort

and expense involved in compiling each of those components, whether it is a draft variation or a development application or an EIS. One cannot help but feel that, depending on who is involved in doing that, particularly if it is a private body, then they are not going to be prepared to spend money unless they are sure that the other element on which it depends is actually going to be passed.

So there is that problem. There is also the problem that, from a community council perspective, trying to assess more than one thing at a time is just hopeless. I am sure we could not do it, because we do not have the manpower and we do not have the time. It would be entirely confusing, I think.

DR BOURKE: Other community groups have suggested that being able to see the DA, what is planned for the site, is actually a real help when they are looking at planning changes.

Mrs Coghlan: Yes. That was proposed to us by the ACTPLA representative at the PDF. There is a certain logic to that. If you can see what is going to happen then you might be more prepared to approve the draft variation. But that to me is a bit backwards in terms of the planning system, in that zoning is done on certain bases in an area and to then come in and say, "We want to change the zoning for a specific development," does not seem quite appropriate.

DR BOURKE: That would have worked very well at Bruce where there was that zoning change a couple of years ago, which the community did not worry about because they thought it was an office block, but then a DA came in for a five-storey residential complex which they very much objected to.

Mrs Coghlan: This is the one that Tom Anderson was talking about?

DR BOURKE: That is the one. It all came good at the end.

Mrs Coghlan: Yes.

DR BOURKE: But if they had been able to see the DA at the same time as the lease variation was in, or the zoning variation, would that not have been a benefit to them at that stage?

MR COE: It could still happen.

Mrs Coghlan: Did the lease variation come in first?

DR BOURKE: Yes.

Mrs Coghlan: What was the lease variation for?

DR BOURKE: It increased the height that was able to be built there.

Mrs Coghlan: I suppose it also—

DR BOURKE: It allowed residential—

Mrs Coghlan: allowed residential as well as commercial.

DR BOURKE: Yes, it allowed residential.

Mrs Coghlan: Yes. It was a question of: did anybody pay any attention to it at the time? They paid attention to the DA because it was a concrete thing, not a—

DR BOURKE: Which is my point entirely.

Mrs Coghlan: That is right, but it can work both ways. As was said previously by an earlier speaker, you could approve the variation on the basis of the DA, but then if the DA is not approved or that particular one falls through for financial reasons or such, they could still end up with something totally different there anyway.

MR COE: That is right.

Mrs Coghlan: You have to decide that that is an approved and appropriate use for that particular site given the area around it on its own without necessarily being complicated by pictures of fancy buildings.

DR BOURKE: What I think you might be saying there is that if the two processes were linked in some way as well as being undertaken simultaneously, that would be something that would work?

Mrs Coghlan: I do not think I am saying that at all.

DR BOURKE: Okay.

Mrs Coghlan: I am saying that I think they should be kept separate and they should be successive rather than together at the same time.

DR BOURKE: Okay.

Mrs Coghlan: There are two different ways. I appreciate the comments of the other side, but that is the way that I see it. I am not sure whether the committee would.

MR COE: A question about the criteria for either special precinct variations or projects of major significance: what risks do you foresee by the current criteria for those declarations?

Mrs Coghlan: They appear to be very generalised and open-ended. There are no limits, either in size or area or value of the proposed development. I feel that the objectives that are used as criteria are just so vague and non-specific that they could be used to approve anything.

MR COE: Thank you.

THE CHAIR: Mr Wall?

MR WALL: Thank you, Mrs Coghlan, for representing the council here with us today. The bill seeks to put immense power in the hands of one individual, which is ultimately the planning minister—

Mrs Coghlan: Yes.

MR WALL: to designate special precincts and approve these developments. Do you or the community council have any concern as to, I guess, what external influences might affect the minister's decision-making ability in granting or not granting—

Mrs Coghlan: That is always a possibility. That is why we have rules and regulations to try and control that sort of thing. Of course, any legislation that is made now will be there for the future until such time as it is further changed. One never knows what influences might occur on the Assembly or on that particular planning minister some time in the future. It is not necessarily just confined to the current incumbents or anything like that, but at the same time there are always pressures that can be brought to bear, and the whole purpose of legislation is usually to limit those pressures.

MR WALL: Do you think that this legislation effectively limits those, or does it in fact, I guess, dilute those protections?

Mrs Coghlan: I think it undermines the whole system, or potentially. As I say, just looking at it superficially, the impression we get is that it opens the door to unintentional things. It needs a lot more time and examination before the legislation is approved.

THE CHAIR: Mrs Coghlan, you have said at the bottom of your statement that there are many desirable changes included in the amendment bill. Would you be able to touch on some of those?

Mrs Coghlan: I knew you would ask that question. I suppose the one advantage over the call-in powers is the disallowable instrument that allows the Assembly to reject the declaration of the special precinct or the special project in the first place. I think we were told at the PDF that that kind of thing has only happened once, and that was in 2000. I cannot remember exactly what it was about, but the point is that planning issues are exceedingly complicated. It is my experience that people need to be very involved in the detail of development applications or any kind of planning issue to be able to make an informed decision.

I suspect that a lot of members of the Assembly who are not involved in this kind of thing would tend to just go along with it and assume that it was appropriate and maybe pass it on that basis or just not take action. The disallowable instrument requires someone to take a positive action. Most people, if they do not have to, will just ignore something they do not have to respond to. Is that cynical?

THE CHAIR: Yes. Any further questions for Mrs Coghlan?

DR BOURKE: Any other desirable changes?

Mrs Coghlan: I do not think that at this stage I have had enough knowledge of the act

to actually come up with those. We just assume, based on statements by other people, that there are desirable things in here.

DR BOURKE: So you think removing the call-in powers is a good thing?

Mrs Coghlan: Not necessarily. It depends on how they are used, I guess.

DR BOURKE: What do you mean?

Mrs Coghlan: As Mr Anderson said earlier, the Bruce one is the only use of the call-in power that was actually based on a general agreement. You will never get 100 per cent agreement, but there was interaction between the two sides and there was a compromise solution worked out. That was a good use of the call-in powers. In general, the call-in powers tend to be used because there are two sides and there is no coming together and no common ground. In that case it is an unsatisfactory way to resolve a problem. I do not know that there is a better way to do so.

DR BOURKE: Thank you.

THE CHAIR: Thank you very much for your time this afternoon, Mrs Coghlan.

Mrs Coghlan: Thank you.

THE CHAIR: We will get a copy of the transcript over to you in the next few days to check for any transcription errors.

MARTIN, MR ERIC, Council member and member, Heritage and Grants Committee, National Trust of Australia (ACT)
PREISS, MR J. BRENDAN, Member, Heritage and Grants Committee, National Trust of Australia (ACT)

THE CHAIR: We now welcome our next witnesses, Mr Eric Martin and Mr Brendan Preiss from the National Trust of Australia. Before we begin, can I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table, the pink card? Could you confirm for the record that you understand the implications of the statement?

Mr Martin: I do.

Mr Preiss: I do.

THE CHAIR: Thank you, gentlemen. Do you wish to say anything about the capacity in which you appear today?

Mr Martin: I am a member of the National Trust Council and also a member of the ACT heritage committee of the National Trust. I am a spokesperson for the National Trust on heritage issues.

Mr Preiss: I am a member of the Heritage and Grants Committee of the ACT National Trust, as well as a long-time resident of the ACT.

THE CHAIR: We have your submission. Would you like to make an opening statement?

Mr Martin: Just on a couple of points, and thank you very much for the opportunity to actually present something to you. The time frame for review of this act is something which concerns us greatly. Also we are greatly concerned about potential impacts on heritage issues. We have outlined those, I think reasonably well, in our submission, so I do not intend to expand on that. But Brendan wants to expand on one particular issue which has come to our attention more since putting our submission in. That relates to an aspect of the appeals process. Brendan will expand on that now.

Mr Preiss: Thank you. We have some considerable concerns about the truncating and elimination of appeals rights. I will not dwell particularly on the removal of merits review at the ACAT level except to say that the number of appeals on heritage matters, or indeed on any matters, that go to ACAT from development applications is minuscule as a fraction of the total number of development applications. In turn, the number of matters that go from the ACAT or anywhere to the Supreme Court is even less than minuscule; it is a fraction of the first group.

Although the explanatory statement cites past precedent in some legislation which has managed to eliminate ADJR, administrative decisions judicial review, at the Supreme Court level, it is difficult to understand why, given the magnitude of the kinds of activities and projects covered by this bill, the government would seek to exclude matters from the occasional, very infrequent, opportunity for Supreme Court review under the relevant ADJR legislation.

The ACT legislation replicates the commonwealth's. I do not propose to recite section 5 in full, but it says that you can go to the Supreme Court for a breach of the rules of natural justice in relation to a decision, where procedures required by law in making the decision were not observed, and where the decision was induced or affected by fraud. And there is a host of other reasons why you can go there. It is really difficult to understand why we would exclude the opportunity to seek review on those sorts of grounds by the somewhat obscure constitutional writs, common law, prerogative writ-type processes.

I am not a follower of all the court decisions in the ACT, but one of the matters that did go to Supreme Court level, as I understand it, in the last few years was a contest between commercial interests in relation to the development of a shopping centre. I make the point that when commercial interests decide to go through any of these processes, in a sense they are subsidised by the general taxpayer, because their expenses are deductible under their commercial business arrangements, in most part. When the government initiates or responds to a matter and goes to court, its expenses are paid by the taxpayer. When a community group or a citizen seeks to go through one of these processes, they are on their own. At the ACAT level, there is the possibility of costs. On occasions community groups are still having difficulty being admitted as parties to some of these matters; their presence is contested by others. When an individual sufficiently aggrieved goes to ACAT, they bear their own expenses. If you go to the Supreme Court, you are potentially liable for costs and damages, so for an individual at that point your house is on the line.

This bill proposes to remove from all the processes associated with this set of activities the kind of discipline that would govern decision-making when people read that they might potentially have to answer for it under the ADJR legislation. We do not think that is a good result regardless of whatever precedent has been established.

THE CHAIR: Questions, colleagues? Mr Coe? Mr Wall?

MR COE: I know this is pure speculation, but what is the impact that this piece of legislation could have if it is enacted on sites which have provisional listing on the heritage register?

Mr Martin: Basically, if it is within one of the precinct zones it actually removes any protection that that site has, because there is no firm registration of that place and therefore it is up to the minister's decision with respect to the heritage issues associated with the site, as we understand it. It removes any protection from the place. Even though it may be provisional or nominated, it does not have any protection under this proposal.

MR COE: Have you had a chance to reflect on how this bill might interact with the heritage bill presented earlier in this Assembly?

Mr Martin: It seems to replace the heritage bill in a number of potential aspects. In particular, with anything other than a registered place, it offers no protection at all. Therefore it supplants the heritage bill in those situations, as we understand it.

MR COE: With regard to the Symonston site, which has been, I think weirdly, singled out in this piece of legislation, is there any heritage value of that site that you are aware of requiring this special treatment for that site?

Mr Martin: I am not aware of any heritage issues associated with it, but I am not particularly au fait with all the details of that particular proposal. Do you know?

Mr Preiss: No, I am not aware of the detail.

Mr Martin: It has not been one that has captured the National Trust's attention at this point in time, but I am not aware of the details of it.

Mr Preiss: I would just add that apart from the possibility—and I do not necessarily pick on the Symonston thing—that an area that is to be cleared may have as yet unregistered or indeed undiscovered sites, it is not entirely clear what is the fate of existing registered sites that may fall within a special precinct. The explanatory memo seems to say that they are a declared site and they are protected. But if the Heritage Council does not have the right to give any advice—if a restriction declaration is made and the Heritage Council then has no right to give any further advice when we get to the DA stage—I am not sure what the assurance of protection for an existing declared site might mean, because the Heritage Council will never get to know what happens.

Mr Martin: Or get to offer advice as to what might be appropriate action to protect the site.

MR COE: I guess that in Australia—I am taking a bit of a punt here—maybe the majority of heritage sites are above ground as opposed to parts of Europe where digging would uncover significant built form underneath. Is that so? Or is it quite likely that, in the construction or excavation process, you could or would uncover heritage significance?

Mr Martin: You could. The situation is that in the current suburban or urban area the chances of uncovering archaeological evidence of any significance would be small—other than what is already known. But in the greenfield sites, which this bill extends to, Indigenous artefacts that could well be not identified yet could exist in some of these sites and could be adversely affected as a result of the potential of this act.

Mr Preiss: We also know from experience around Australia over the years that things mysteriously happen on building sites and heritage walls fall down overnight.

Mr Martin: So there is some concern in respect to the greenfield sites and archaeological evidence from an Indigenous point of view.

MR COE: Thank you.

DR BOURKE: We have had a couple of other witnesses today talk about the desirability of the simultaneous application process of an environmental impact statement, development application and lease variation. What is the trust's view on that?

Mr Martin: Sometimes it can work and sometimes it will not. The problem is that when a development application is actually formulated and put forward, there are certain decisions that have already been made as to what is the preferred or intended outcome. When you are running concurrently with an EIS, environmental impact statement, and you are running also in parallel with a consultation process, then either of those two could, as a result of further research, information or analysis, change fundamental principles in the DA. Therefore, it could well be that a circumstance could arise where the original development application has to be substantially changed as a result of either the EIS impact or the consultation process bringing together or bringing to light new information. When that occurs, unfortunately there is a cost and a waste of time in respect of the DA application proceeding too early without an adequately informed scenario.

DR BOURKE: But that is a commercial decision weighed against the time cost to do the proposal separately.

Mr Martin: It is a commercial decision, but also, if the proponent is the government, it is the taxpayer's concern as well, because they have to bear the cost of redoing a DA. If it was a private development, yes, you can make a commercial decision, and that individual proponent then suffers the consequences of that action, but that would not apply if the government was the proponent.

DR BOURKE: So with those processes you would have to actually have to do them pretty well at the start?

Mr Martin: Yes. You may do your homework well enough to minimise that risk up-front, but this act does not guarantee quality; it just guarantees a process.

MR COE: Would I be right in thinking that there is still likely to be a cost to government even if it is a commercial project because there would still be assessments of the proposal undertaken by the government?

Mr Martin: There could well be. What happens, unfortunately, is that when a development application is in, there is government time spent on assessing that development application. If it has to be substantially amended, there is more government time. I am not quite sure what the fee structure is and whether that can be recouped or whether it is just an extra cost that the government bears. It could well be.

Mr Preiss: It is not entirely clear to us who would bear some costs in the special precinct area. You have got an overarching national capital plan, which is given. You have got the territory plan as it exists. The bill adds extra layers of paperwork, of preparation. So you are going to end up having to have regard to things that exist already, like the territory plan, the spatial plan and the strategic plan. The legislation requires a concept plan, which is in section 92, however defined, and a structure plan, in section 93, which says that it covers principles and policies relevant to the area. You have got to have regard to something called a statement of strategic direction; I have not yet found where that is. And then you are going to end up with a special precinct declaration, a restriction declaration. Somewhere around there, there will be precinct codes and overlays, EISs, DAs, technical amendments and the new special

amendments. And I do not think I have got it all.

I am not sure who is supposed to prepare all these, but if the government has to prepare some of them, like the concept plan and the structure plan, all that bundle, potentially, in one way or another, is going to arrive on everybody's desk at the start of the formal statutory consultation period. And lying behind it will be months, if not years, of prior thinking. I heard Mrs Coghlan talking about the burden on anybody who wants to respond in trying to get through those layers, and I know others would have talked about it. So there is a cost to the community as well as a cost to the government.

MR COE: More fundamentally, on the territory plan or the planning system at large, when you have got that layer of complexity, and really perhaps inaccessibility and inability to comprehend the system, is that fair to the community at large, whether it be developers, stakeholders or any other concerned group?

Mr Preiss: I think you have heard the implication of what the community groups would think about that burden, and they are recognised by government as a voice for the community. They are formally recognised by the government. I think that if they feel there is a burden, that should be taken into account. I do not know what commercial and development interests think, and it does not seem that we will find out, because there are no witnesses. I do not know who all the submissions come from, but if there are no submissions from the property and commercial community, I do not know what to think. I am afraid you will have to be the ones to decide what is fair.

Mr Martin: It certainly makes it a much more confused situation for the community group to understand the process and also the implications.

THE CHAIR: Can I just ask something on another tack, if I could, while we have got you as our last witnesses for today. The minister came before us on Monday the 14th. In his opening statement, he made comments in regard to this particular legislation and other jurisdictions. He said that in fact the ACT is probably the only jurisdiction that does not have this form of legislation. Then he went on to talk about some comparisons in relation to the ACT or the proposal here in the ACT and projects of state significance. He said that this bill here in the ACT should go through. He said it is the only jurisdiction where the government has veto power over those bills. He said that it is the only jurisdiction, and it is not the case in New South Wales or any of the other jurisdictions. Do you have any comment in regard to that?

Mr Martin: I will make an initial comment; then Brendan will deal with the detail. The initial comment is that the ACT is different in the sense that it has one tier of government which replaces a state government and a local government in other states. Therefore, it is not necessarily equivalent. I have not had a chance to look at the implications and what has happened with other states and territories, but we did look at some of the issues when we were reviewing the heritage bill last year, and Brendan will expand on some of those aspects.

Mr Preiss: When we looked at the Heritage Legislation Amendment Bill a year ago, we did try to review the relevant provisions of state legislation, but it was on a slightly different aspect. We have not had an opportunity to review state legislation about this

set of issues, so I cannot answer definitively as to what exists. But not much of precise comparison was quoted by the minister. As to how much we are paralleling anybody else, I am not sure. Just as we may not, under these bills, have the reinforcing discipline of a potential review under ADJR, I think now what can be said is that the territory is the only legislative jurisdiction in Australia which will not have an oversight independent review committee of the kind that has been making all the headlines in New South Wales. That is another review mechanism that we will be lacking against the complexity of the kinds of transactions that might be involved in this sort of effort.

MR COE: Going to a question that Mr Wall asked a previous witness—given the concentration of powers in this bill on the executive, but primarily on the minister, do you think that could potentially be attractive for undue influence?

Mr Martin: Possibly, but the real issue there is that the powers rest with the minister in many of these aspects. He is making decisions on a whole range of planning, heritage and other issues and replacing expert advice. I do not think one personally can actually have the knowledge to make, if you like, an informed and correct decision with respect to heritage issues, because he has not got training and experience in heritage issues. Therefore, I think the process is flawed in that way if he is not seeking appropriate independent expert advice.

DR BOURKE: But the minister would be making a decision based on the advice that he receives from his department, surely?

Mr Martin: Yes, but under the proposed amendments, there is no need, as I understand it, for Heritage Council independent advice to be provided, and therefore independent decisions can be made with whatever information the minister may have at his hand to assist him,. Those sorts of checks and balances are removed within the legislation, as we understand it at this point in time.

Mr Preiss: If Mr Coe's question was about the distinction between the minister taking the decision and the executive—was that it?

MR COE: No; it is more that at present many of these decisions are actually taken by ACTPLA with regard to different processes, or at least the process has a far longer period for consultation and public discussion. If you are going to truncate that process and there is a commercial interest in having that process truncated, in effect, is there scope for proponents to unduly lobby a minister to declare either a special variation or a major project?

Mr Preiss: We cannot really say, except that I note that I think there is a discrepancy between what is said in the explanatory memorandum and what is in the bill about information at the preliminary stages of either—I am sorry; I have not got it now—the special precinct or the major project. In the ex memo it says that the proponent's details will be made known, but that is not said in the legislation. What the legislation says—and I am sorry, but I have not got a specific note of this—is that the minister may require any information that he or she decides is relevant to be made known. It is not as specific as the ex memo has said. It is broadly relevant to your question, perhaps, but I am just struggling with the time.

THE CHAIR: Thank you very much for your time this afternoon. The secretary will send you a copy of the transcript in a few days so that you can check for any transcription errors. That concludes the committee's proceedings for today. We will put a copy of the transcript on the webpage in the next few days. And, as previously mentioned, we will send a copy out to all of the witnesses to check for typographical and other transcription errors.

The committee adjourned at 4.32 pm.