LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, ENVIRONMENT AND TERRITORY AND MUNICIPAL SERVICES

(Reference: Draft Variation to the territory plan No 343: Residential blocks surrendered under the loose fill asbestos insulation eradication schemes)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 30 SEPTEMBER 2015

Secretary to the committee:
Mr H Finlay (Ph: 620 50129)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 2 pm.

GENTLEMAN, MR MICK, **MLA**, Minister for Planning
KEFFORD, MR ANDREW, Head, Asbestos Response Task Force
EKELUND MS DORTE, Director-General, Environment and Planning Directorate
CORRIGAN, MR JIM, Executive Director Planning Delivery, Environment and Planning Directorate

THE CHAIR: Welcome to this public hearing of the Standing Committee on Planning, Environment and Territory and Municipal Services inquiring into draft variation to the territory plan No 343, residential blocks surrendered under the loose-fill asbestos insulation eradication scheme. On behalf of the committee, minister, thank you, and thank you to officials, for coming along today. This is the last public hearing of this inquiry. As usual, can I have your confirmation that you have understood the implications on the pink privileges statement?

Mr Gentleman: Yes, indeed.

THE CHAIR: Minister, would you like to make an opening statement?

Mr Gentleman: Yes, if I could. Thank you, chair and committee members, for the opportunity to be here this afternoon. I would also like to thank you for your work on this matter.

As we know, this is a unique situation. In this regard, I support the ACT government's commitment to resolve this issue and to eradicate the loose-fill asbestos from residential dwellings once and for all across the territory. To this end, DV 343 is a small but not insignificant part of the government's strategy to realise its goal. In this regard, if any broader issues are raised today, I may need to defer to the Asbestos Response Taskforce for response. My officials and I can respond to the draft variation to the territory plan.

DV 343 proposes to vary the territory plan to provide an opportunity for unit-titled dual occupancy development on, potentially, 743 surrendered blocks in strictly limited circumstances. These include surrendered blocks that are in the residential RZ1 suburban zone, are not heritage registered or nominated, are 700 square metres and over in size, and are able to comply with the provisions proposed to be introduced in DV 343, including plot ratio requirements, building height restrictions and design criteria relating to existing residential character and amenity.

Any dual occupancy proposed under these provisions would also need to comply with the relevant existing provisions of the RZ1 suburban zone. These include setbacks, building envelopes, solar access and private open space requirements. Not all of the blocks are located or shaped in a way that would make it easy for dual occupancy to comply with existing and proposed territory plan provisions. Of the 743 blocks potentially subject to DV 343, more than 500 are 800 square metres in size and, as such, are already able to be redeveloped for dual occupancy, albeit without the unit titling. It is also apparent that many of the blocks are more attractive financially for redevelopment for single dwellings.

In reality, DV 343 proposes modest changes to the provisions applying to the surrendered blocks. I have listened to many and varied community concerns, and I duly referred DV 343 to this standing committee for consideration and inquiry. I have kept myself informed about the 70 public submissions that this committee has received—and I have personally read through most of those—and the issues raised in the public hearings that you have conducted to date.

The draft variation to the territory plan will apply to less than one per cent of residential RZ1 zoned blocks scattered throughout the existing residential area. I stress to this committee that DV 343 has a very sound planning basis for promoting modest levels of residential redevelopment and intensification throughout the established residential suburbs.

DV 343 is entirely consistent with the ACT planning strategy, the territory plan statement of strategic directions and the residential RZ1 suburban zone objectives. DV 343 is intended to provide a diversity of housing choice throughout the residential areas of Canberra to meet the challenging needs and changing needs of the community, including the ability for residents to age in place.

Importantly, I want to make it clear to the committee and the community that this variation will include a design criterion for the redevelopment of residential blocks surrendered under the scheme and has been included to maintain and support the amenity of the neighbouring properties, streets and suburbs. Whilst DV 343 will only apply to those Fluffy-affected blocks, the ACT government, as it always does, will continue to monitor changes in demographics and community needs and ensure that the planning system remains responsive.

Supplies of residential land are met by balancing development in greenfield areas with urban renewal in established areas. The territory plan provisions will continue to be reviewed wherever these supplies no longer meet community expectations.

Officials from the Environment and Planning Directorate and the head of the Asbestos Response Taskforce are available to answer any questions that you may have.

THE CHAIR: Many thanks. I was wondering whether you received the letter that we would have sent last week about a couple of the questions that have come up. You noted that you had read through submissions and listened to some of the hearings. With the comment you made earlier about the fact that you have assessed that many of the blocks will be more attractive financially for a single dwelling, can you talk us through that a bit and talk about how you have come to that conclusion?

Mr Gentleman: Yes. Some of the affected blocks are in the older suburbs of the territory where people may want to construct larger dwellings, and that presents the opportunity for particular owners to develop a larger dwelling on those blocks rather than vary the block and build two dwellings on the block. I will ask directorate officials to comment.

Ms Ekelund: Many of the blocks will limit the floor space ratio to 0.35, less than the 0.5 for a single dwelling, so, as the minister said, in many cases it may be more attractive to build a larger single dwelling than to build two smaller dwellings as dual

occupancies. As we found after the 2003 fires, there is an underlying demand for people to acquire land in established suburbs without having to pay for the dwelling that might otherwise be on it.

THE CHAIR: That is certainly consistent with some of the evidence that we have had, particularly from a number of different architects, around the financial viability of a dual occupancy on a 0.35 plot ratio block. Are you able to talk through that a bit as well? I do not know if you are familiar with what they said. They said there may not be much demand at all for dual occupancy on a 0.35 plot ratio but there may be on a 0.5.

Ms Ekelund: Can I add something, minister?

Mr Gentleman: Yes.

Ms Ekelund: We are conscious that that is the case in the lower density RZ1 zone; it is a low density suburban zone. The policy framework at the moment ensures that any dual occupancy that happens is in scale with or even on a smaller scale than single dwellings in order for it to be considered acceptable within the low density zone. We are conscious that in some circumstances, because these can be quite valuable sites in established areas, you will get a higher return for a single dwelling and that, if you bought a quite expensive block and then built two smallish homes, it may not be as profitable as building one larger home. We are conscious that that is the case, especially on the smaller blocks.

THE CHAIR: Just going to the density question, and you also mentioned strategies to enable redevelopment of existing established suburbs, particularly for ageing in place, we have heard quite a bit of evidence from people who have found that there is not the variety of housing types in some of the established suburbs that they would like to see. Is that something you have also heard?

Mr Gentleman: The government has a policy of ageing in place, so we are trying to assist people to stay in the suburbs they have grown up in—where they want to, of course. So there are opportunities there where we have looked at supplying planning options that give an opportunity for people to build aged persons accommodation in the suburb and therefore they can move into those. But we have also had a lot of correspondence to my office about opportunities for people in some of the older suburbs to perhaps do dual occupancy on their property. We will certainly look at that in the future.

MR COE: I would like to put a question that was put perhaps rhetorically to the committee by Ms Hunt in her evidence. She said:

> If the ACT Government considers the planning changes to the RZ1 Fluffy blocks to be consistent with the RZ1 Zoning Objectives, then why are neighbouring RZ1 blocks not allowed to access the same planning permissions?

Mr Gentleman: It is a good question, and we have heard that through this inquiry. Indeed, it occurred with responses to EPD's community consultations on DV 343 as well. This particular program is looking directly at the asbestos eradication program

and looking at opportunities to provide some financial support for the costs of that program. At this point, we know that we will probably be in debt for about $400 million after the program is run through. Whilst the federal government has given us some assistance in that with an interest-free loan, it means that the burden is on the rest of the Canberra community to find that funding. So it is important for the government to look at opportunities to recoup some of that. At this point we are looking at these particular Mr Fluffy blocks to do the variation.

MR COE: That may well be so, but you as the planning minister and we as the planning committee are looking at the planning imperatives of this proposal. How does it stack up to have two blocks next to each other with separate rules, even if they have the same attributes?

Mr Gentleman: That has occurred in the past, of course. We have had dual occupancies constructed in the territory in RZ1 before. Of course, that is an opportunity now in RZ1: you can have a dual occupancy constructed, but you do not have unit title at the moment. Of course, that is limited to 800 square metres or larger. This variation proposes, as I have mentioned, to reduce that to 700 square metres and ensure that there can be a unit title proposition.

MR COE: But what is the planning rationale for having two blocks next to each other that may well have exactly the same attributes in terms of dimensions but have different planning controls? What is the planning rationale?

Mr Gentleman: It sits within the overarching territory plan and the way we treat our suburbs in different zonings. It fits within RZ1 currently.

MR COE: Could you explain to me a situation whereby there will be two blocks next to each other and both might be, say, 850 square metres but they have different planning controls attached to them. Where would that be the case somewhere else in Canberra?

Ms Ekelund: The policy question about whether this sort of provision should be opened up to a larger proportion of RZ1 properties, or indeed all, is a much larger policy discussion with the community. As the minister said, this affects only one per cent of the low density suburban blocks in the ACT. It is a very modest change, therefore, to the whole policy landscape of the ACT. Even so, even though we would suggest it is only a very modest change, the committee and we—the minister and the directorate—have heard there is a level of disquiet about having dual occupancies in suburban areas. If this were to apply more broadly to all suburban blocks, we would suggest that it would warrant a longer discussion with the community. That is not to say that we should not have that discussion, and the issue of housing choices and ageing in place is a continuing debate, but, as the minister said, this is about focusing on an immediate challenge that the territory has at the moment in order to deal with the Mr Fluffy eradication scheme, and that is time critical. That does not give us the time to have a longer debate with the community about such a substantial policy change.

MR COE: I accept that answer, but that surely is an answer as to the government's and the Chief Minister's policy for overseeing this project. I am particularly interested

in the view from planning experts and the planning minister about what is the planning rationale. Is there any planning rationale for having two blocks treated differently if they are next to each other?

Mr Gentleman: We currently have blocks that are treated differently across the territory, of course. This variation is a response to the community in a very difficult time—the opportunity to, as I said, seek some financial come-back from the $400 million that we see ourselves having to go into debt for in response to the asbestos eradication scheme. If we were not to take any action towards trying to recoup some of that funding—and planning can be a part of government policy, of course—we would see ourselves in further debt. Of course, the community is the one that carries that burden. It is important for us to make planning decisions alongside government decisions.

MR COE: So, in effect, the need to recoup funds trumps the planning principles of equality?

Mr Gentleman: No, I did not say that. No. It is my strong view that whilst we are making some changes here in the planning system, it still fits within our territory plan. Indeed, we have responded to that, and EPD have responded to that in their report as well.

MR COE: But it is not equal, is it? You could have two blocks next to each other that have different planning controls. That is, by definition, not equal.

Ms Ekelund: Mr Corrigan has just reminded me that I should probably point out that areas such as heritage precincts may have the same underlying zoning but different provisions relating to their heritage character. So there are different parts of the city with the same zone that are treated differently. The minister alluded to the fact that there are legacy decisions as well where there have been dual occupancies and other provisions but they still have the same zoning.

MR COE: Not by design, though.

MR WALL: Just on that one—

MR GENTLEMAN: Certainly.

MR WALL: I just want to clarify. With the scenario you have just given us there, Ms Ekelund, about some areas where a heritage precinct block might have different controls on it from a block next door, that is more by virtue of the building that is on the block rather than the land use itself? Is that correct?

Ms Ekelund: Or the nature of the precinct. It could be the building or it could be the precinct.

Mr Gentleman: Heritage Council have a number of criteria that they look at when they are looking at listing particular areas, precincts or individual houses or blocks. They are quite detailed in their criteria. But going back to your earlier—

MR WALL: That is derived from the historical significance of the structure, or structures, which gives the more stringent planning restrictions on that parcel of land or that lease. But say they are in an RZ1 or an RZ2 area adjoining each other. The underlying lease clause is still the same, but there are additional safeguards placed by heritage because of the significance of the dwellings or the history of that parcel of land. In essence, if that building were, for some reason or another, to disappear, the uses of that land would be identical to those of the adjoining land.

MR COE: And the decision can be appealed.

Ms Ekelund: In this case, we will see buildings in heritage precincts which will need to be demolished and only a single dwelling will be able to replace them—not dual occupancy. This variation does not apply to heritage precincts or heritage dwellings. The new rules will not be the same as everywhere else, even though the dwelling is gone, because it is about the precinct. I guess the issue is that there are boundary issues all the time. You might be in a precinct right next to a heritage precinct but it has been determined that the value of the adjoining precinct is not quite as high a value. Planning is partly technical but it is also partly reflective of the community's attitudes to what is acceptable at a time as determined by our elected officials.

MR COE: It would be a bit circular, I think, to continue down that line. With regard to the evidence that we heard from numerous architects that presented to the committee, almost all, if not all of them, said that the main take-up is going to be for single dwellings, stand-alone dwellings, on these blocks. Do you accept that that is the likely scenario?

Mr Gentleman: That will depend, firstly, on the original owners—to see what they want to do with their block. They will have first right of refusal on the block. It will depend on the choice they make in regard to going forward there.

MR COE: But what does your modelling suggest? What is going to happen with a number of dwellings as a result of these 700 to 800 blocks?

Mr Gentleman: On the dwellings that the asbestos task force has taken up, there will be an opportunity for them to look at each individual one and see which ones will give them the best outcomes.

MR COE: But you must have some idea. How did you come to 700? Why could it not be 600 or 800? Obviously there was a reason you chose that number. Surely that was linked to, in effect, the capacity of those blocks to have multiple dwellings built. Therefore, you must have an idea as to how many dwellings you think will actually be constructed on the number of blocks.

Mr Gentleman: Yes. There is an opportunity on a number of blocks that could provide that position to do a dual occupancy on. With those ones that are purchased by the task force, they will be able to look at each of those and determine which ones will be suitable. I will ask Mr Kefford about modelling that he has done for those particular blocks.

Mr Kefford: Mr Coe, the 743 number that the minister referred to in his opening

remarks is the total number of the affected blocks that are larger than 700 metres, less the ones that are heritage and less the ones that happen to have already been unit titled under the 2003 rules. As the minister has described, it is not our expectation that every one of those will have a dual occupancy built on it. Probably the primary reason for that, first of all, in the blocks that are surrendered in the scheme, is that where there is a first right of refusal, most of the owners who are talking to us about first right of refusal are going to rebuild a family home; they are not talking about doing this. Having said that, there are some who are contemplating doing this as a mechanism for being able to return to their community and stay in place and so on.

Beyond that choice of the owners who might acquire the block under their first right of refusal, there will be some blocks where this cannot be done because of the physical characteristics of a block. The task force has been careful in its commentary to say that the permissions in the draft variation are just those; there is no particular requirement. Once the block is sold, it is up to whoever purchases it, be that the former owner or someone else, to make their own decisions about what they might construct on the block.

MR COE: So are you saying that you really do not have any idea—you have done no modelling, you have no understanding about how many dwellings will be constructed on these 743 blocks?

Mr Gentleman: No, that is incorrect. As I mentioned, the task force has looked at that opportunity and has provided government with advice on what can occur out of that.

MR COE: How many dwellings do you expect will be constructed on the 743 blocks?

Mr Gentleman: I think Mr Kefford has answered that. That will depend, of course, on the take-up by the original owners.

MR COE: I understand there are a lot of variables, but surely you have an assumption or a ballpark figure. Surely the LDA would need to know what the supply of dwellings is going to be. Surely someone in the task force or in the planning directorate has put together a ballpark figure for the number of dwellings that are going to be constructed?

Mr Kefford: Mr Coe, the difficulty with the question you are asking is—no, we do not have a number of dwellings that will be being built; we have not done that work, for the reasons the minister has identified. Have we looked at the blocks and made an assessment—coming back to your original question—that there are some blocks where 343 may apply because of size but will not prove practical? Yes, we have done that. We would agree that it does not work, and cannot work, on all of them.

In terms of the resale of blocks, under the scheme, the government has been clear that they will be valued and prices set by the LDA based on the highest and best use for those blocks. It may well be that, as part of that individual block-by-block consideration of a sale price, a view is formed that this one particularly is not conducive to dual occupancy because the market in that particular suburb does not

demand it or because of physical characteristics. At this stage we have not done that. We have not sold any blocks. We cannot give you a numerical answer to your question because there are too many variables for us to put a number on how many dwellings will be built.

MR COE: In the first part of your response, you said that you had had a look at some of the blocks and deemed that some were going to be very difficult to construct. How many fall into that category?

Mr Kefford: I would have to take that question on notice, Mr Coe. I have not got the number with me today.

MR COE: Sure; could you please do that. If it turns out that the architects, the experts, who have looked at this are correct and the vast majority of blocks end up being a single dwelling, is this whole exercise just putting Mr Fluffy owners through unnecessary angst?

Mr Gentleman: Mr Coe, that is a hypothetical question. As you have heard from Mr Kefford, there has been some detailed work on which blocks will be suitable for dual occupancy and which ones will not be suitable for dual occupancy. The implementation of this variation, if it goes forward, will mean that the government will have the opportunity to do that on those particular blocks and, therefore, seek some remission on the cost of the asbestos eradication program.

MR COE: In which case, why is it not spot rezoning? Why is it not, in effect, saying, "Okay, we're going to look at the 743 blocks and then we're going to say these are the 300 or 400"—or whatever the number is—"whereby a unit titling of two or three dwellings is possible. Therefore, we'll rezone these but we won't rezone the others."?

Mr Gentleman: Let me make this clear: the proposition in this variation is for dual occupancy and unit titling, not any more than two opportunities on those blocks. I hope that clears up that information about whether it would be beyond two. For the particular purpose of the overarching variation across RZ1, I think the planning imperative there is to ensure that we have the best outcome for the territory. I will ask directorate staff to give some more detailed information.

Ms Ekelund: I guess the suggestion that we would do virtually a spot rezoning on each block would suggest that we would expend the resources to do a detailed analysis of each block and to virtually determine what either an existing landowner who wants to repurchase their site wants to do and is capable of doing—

MR COE: This has to happen anyway, by the LDA, with the valuation.

Ms Ekelund: But it is a general one. We know the creativity of the architects et cetera. Having a blanket approach will mean that individual lessees and their designers can determine what they want to do on their site. It is much freer and gives them greater flexibility rather than the government predetermining what should happen on each block to that level of detail. It gives the purchaser greater flexibility to consider what is desirable for them.

MR COE: In which case, why is it 700 square metres? Why is it not 600 or 500? Then you could have the same level of choice for all blocks?

Mr Gentleman: With the task force, the directorate has had a look at what particular sizes provide the best outcomes for dual occupancy. We have seen in RZ2, for example, sizes that permit the use of dual occupancy—and, in previous cases, in RZ1. They have done some detailed work to determine that 700 square metres would be the most appropriate.

MR COE: We heard evidence that there can be many successful multi-unit sites on less than 700 square metres, and there would be in some RZ2s in Canberra, I would suggest. So that—

Mr Gentleman: Just to clear that up, though, we are not talking about multi-unit sites; we are simply talking about dual occupancy. I want to make sure that those in the community who are listening are assured that—

MR COE: It is multi-units, though. Dual occupancy unit titling is a multi-unit site.

Mr Gentleman: We are only looking at two buildings on these sites, not groups of flats, for example.

MR COE: Sure, but two units. There is nothing magical about 700 square metres. If the aspect of the block is correct, if the shape of the block is correct, if there is a conducive 500 square metre block, why would you not allow that, given the rationale about allowing choice?

Mr Gentleman: I will ask Mr Corrigan to give you some of the details of the work he has been going through.

Mr Corrigan: Mr Coe, there is a bit to this, actually, and the answer might help your original question as well. The figure of 700 square metres comes from work done in the early 2000s with the government of the day. At the time, there was a concern in the community about too many dual occupancies going on. What was concerning people was that the typical form happening was that the existing brick veneer dwelling at the front was remaining and people were putting a quite large two-storey dwelling in the backyard. That was overlooking, overshadowing and things like that. People were concerned about that.

At the time, the technical planning people did an analysis around that which led to changes to the territory plan. Through that work in the RZ1 zone—it is a low density zone, and it allows for some modest infill, so dual occupancies—it still allows for that. From the work that was done—with 700 square metres and with all the other requirements around setbacks, open space provisions and things like that, with access for maybe two driveways, carports, garages and the like, with the dwellings and open space—700 square metres was about the threshold for a reasonable dual occupancy to work well. Yes, you are quite right: clever architects, and we see it in other cities, can make dual occupancies work on very small blocks with all sorts of things, and you can get some really interesting housing forms.

This is where it comes back to your original question with the RZ1 zone. It is the suburban zone, so we are looking for modest opportunities in the suburban zones. Hence the limits of 700 square metres, because we know that generally works. The other thing with 700 square metres, the other rationale, is that with the RZ2 zone, which is slightly higher densities, its limit for dual occupancies is 700 square metres. So it is consistent there; it is not introducing another provision.

That is where the rationale comes to 700. That is why it is not 600 or 500. It could be, but that really starts what Dorte was alluding to earlier. That is a much bigger policy issue that this variation is not about. This variation is very targeted to those affected properties.

I hope that helps also with the original question about the planning rationale. That is the rationale that went into it. It allows some modest opportunities for dual occupancy in the RZ1 zone without going to the RZ2 and RZ3 opportunities. The RZ1 zone is the suburban zone. There are all sorts of historical reasons through Canberra—some of the RZ1 zonings affect properties that have been there for almost 100 years now. There are all sorts of things: there are old leases; there are what are called non-standard blocks; there are blocks that have permissible dual occupancy permissions already. Different rules apply to them. It is not all equal. It is not all pure. There is a range of things. It is possible that one block on one site can only do certain things but the block next door can have additional opportunities, for historical reasons and things like that. So it happens.

That is why it is done. That is the rationale. That is also why it is consistent with the RZ1 zone and the objectives. But it is very modest. The changes are quite modest, and deliberately so.

MR COE: Minister, you must support the principle of dual occupancies if you are endorsing this variation. With that said, what are your views about extending these provisions to the rest of Canberra?

Mr Gentleman: As the director-general has said, this is a matter for further community consultation. At the moment we are looking at the asbestos eradication program and the opportunity, as I have mentioned, to recoup some funds for our possible $400 million cost. That is what we are targeting at the moment. I would be interested in the committee's views on what they have heard from the community about that. At the moment, this is the variation that we are looking at. Your question would be for further discussion.

MR COE: Sure. If the purpose is to recoup funds for this, which means that there is going to be a premium attracted by the government for blocks sold with this additional right, does that not mean that you risk undermining these property values if, in a year, two years or five years, the rules change across Canberra and you allow multi-unit or dual occupancies on the rest of Canberra's blocks over 700 square metres?

Mr Gentleman: I do not think there is any evidence to support the proposal that the value of properties will reduce because of these changes.

MR COE: But surely people are paying a premium for these blocks because only one per cent of Canberra's blocks are going to be subject to this. Yet perhaps, in a year, two years or five years, thousands of other blocks will come into the market that in effect have these same rights. Surely there has to be a standardisation of these values, and that must mean that the value of these blocks relative to that of the other blocks will come down?

Mr Gentleman: Mr Coe, I have seen a lot of planning changes across the territory in my years in the ACT. The only time I have seen values of houses and blocks reduce is where there has been an immediate effect right across the territory, usually because of unemployment. After federal government job losses in the mid to late 1990s, we saw some reduction in property values, but I have not seen any evidence to support an argument that there have been property value reductions because of planning changes.

MR COE: I am talking about the value of blocks relative to other blocks that formerly did not have the same provisions but then would.

Mr Gentleman: As I said, evidence to date does not support an argument that there would be a reduction in value, relative or not.

MR COE: Can you give me an example which is applicable of where this has been done before?

Mr Gentleman: There have been planning changes across the territory. I think the most applicable one would be garden city variation 200, where we saw changes to dual occupancy before. We did not see any changes in the value of blocks during that process.

MR COE: But that was taking away property rights, in effect, for some properties, not adding to the residual.

Mr Gentleman: As I mentioned, I have not seen any evidence that shows me that planning changes have produced the results that you are talking about.

MR COE: By definition, the purpose of this is to recoup funds. That means there must be a premium attracted to blocks that have the potential for a dual occupancy. Therefore, if every other block gets that same potential, there is no premium.

Mr Gentleman: It is a hypothetical question. We are not going down that route. We are looking at this variation, which is one per cent—

MR COE: It is not a hypothetical.

MR WALL: It is simple economics.

MR COE: This is your scenario. This is what you are proposing.

Mr Gentleman: No, Mr Coe; you are moving into what would occur if the rest of RZ1 went to dual occupancy. I am saying that this variation is looking at only one per

cent of RZ1 dual occupancy available to the Mr Fluffy blocks.

MR COE: I would be very concerned about the government potentially gouging people, the government then changing the rules and people going into negative equity as a result of a blanket change to the planning system.

Mr Gentleman: As mentioned, in all my time in the territory—and that is my lifetime—I have not seen that occur.

MR COE: I do not think there is an applicable situation.

MR WALL: Mr Kefford, with the first right of refusal that Fluffy property owners have, is that an opt-in or an opt-out scenario?

Mr Kefford: When an owner comes to sign the deed of surrender, they are able to say that yes, they definitely want it; yes, they might want it; or no, they do not want it. There is no cost attached to that. That is why we have seen that it has been steady at about two-thirds who have said yes or maybe. We are in the process, having just published the first guidelines, of calling back the owners to see whether that remains their view. In lots of cases, that is no longer their intention. Many of them, as they have made the surrender, have said, "Look, we've ticked it. We don't really think we're ever going to use it." Because there is no cost to doing so, a lot of them have. They are the three choices that are available.

MR WALL: To date, how do the numbers stand? How many have said yes or maybe and how many have said no?

Mr Kefford: I would have to take the final numbers on notice, Mr Wall, but it has been reasonably consistent before and after the scheme. About a third have said yes, about a third have said maybe and the balance have said no.

MR WALL: Of the 743 blocks that are up for discussion—over 700, excluding heritage and already unit titled blocks—how many have not got a previous owner willing to exercise their first right of refusal?

Mr Kefford: I do not think the proportions are any different in this part of the block sizes in the scheme. As we said, there are 740 of them. That is most of them anyway.

MR WALL: Minister, just last week the Chief Minister announced that the land rent scheme would be available for eligible Fluffy families to use to purchase back their block if they meet the criteria. Are there going to be any planning restrictions on what they can use that block for if they purchase it back under land rent?

Mr Gentleman: Only in regard to the availability on that block in that zone. All normal planning conditions would apply.

MR WALL: There would be nothing stopping a family from using the land rent scheme, buying the block back and ultimately turning it into a dual occupancy?

Mr Gentleman: I will ask Mr Kefford to explain the land rent scheme in relation to

those particular blocks.

Mr Kefford: The accessibility to land rent has been part of the announcement since October. The legislation introduced last week is to permit that to be done. Land rent is not available on unit title blocks. I think that with the conversations we are having with people who are eligible for land rent and are most focused on doing that, they are talking about doing a single house; they are not talking about doing this. And they could not do a unit title development under land rent in any event.

Mr Gentleman: I can mention a conversation I had with a couple who were Mr Fluffy owners and have surrendered their house in Kambah to the task force. They have now decided to land rent and build in the new suburbs in Molonglo. They advise me that this was a fantastic opportunity for them, that they would never have been able to build what they term the house of their dreams in this new suburb if it was not for this particular opportunity of land rent in the suburbs. Whilst it is not on their original block, they are really looking forward to the construction of the house of their dreams in the new suburb.

MR WALL: There certainly are some positives to the land rent scheme in that sense, minister, but the question arises. The block is going to allow for dual occupancy. An owner may wish to repurchase it using land rent. What is the mechanism going to be, should they choose to build a secondary dwelling on it and turn it into a dual occupancy, to transition that lease out of land rent?

Mr Kefford: The legislation that is in front of the Assembly provides that if someone who is exercising their first right of refusal goes down that path, they pay the land rent based on the unimproved value of the block. The legislation provides that at the point they wish to convert it to a full and normal lease—or, indeed, to sell it—it is sold at market value. Following through to your question, the owner would need to convert it to a full lease before they could seek to access this—having built one under the land rent scheme. It may not prove to be practical, but they would have to go through those gates.

MR WALL: An owner cannot, under the land rent scheme, unit title a second dwelling on the property. But variation 343 as it stands would allow for the second dwelling to be built but not necessarily unit titled. In essence, the Fluffy family could be the owners of the lease under the land rent scheme, occupy one of the dwellings—or neither of the dwellings in one instance but rent both of them out separately—and retain ownership of both dwellings.

Mr Gentleman: There is a level of detail in there—

MR WALL: Ultimately, do a dual occupancy without instituting a unit title.

Mr Kefford: There are two issues there, Mr Wall. First of all, with the first right of refusal there are owner occupation requirements in the building so the scenario you have just outlined is not permissible.

MR WALL: They could live in one and rent the other out.

Mr Kefford: The other thing to keep in mind is that to access land rent there are income and eligibility levels. The original intent of the scheme was a housing affordability scheme. The people who are talking to us about pursuing this path, without getting too far into personal circumstances, I suspect would be unable to fund that sort of development, given what they are saying to us. In any event, the provisions around the land rent lease may well prohibit what you are talking about.

MR WALL: Another question I have is this, minister. Predominantly, these blocks were gazetted and subdivided long before solar efficiency was even considered. Their orientation, in some instances, I would imagine, is pretty horrendous. Provisions such as those that were brought in in draft variation 306 are going to face, in some instances, from my experience in the established housing construction sector, some tight limitations on what can and cannot be built. Is there any opportunity or potential for those to be relaxed for various blocks or in various scenarios where the pure orientation of the block inhibits what would be good design and good construction practices in 2015?

Mr Gentleman: We had this discussion in the Assembly just last week in regard to solar access for blocks in the territory. I advised that I have been working with the directorate on looking at aspects of those opportunities. We still want to provide the best opportunity for people in the territory to have as much solar access as is applicable. But there may be an opportunity to amend some of the building code to look at where it is amenable to vary that for these opportunities. I will ask the director to give some more detail.

MR COE: Do you mean the territory plan?

Mr Gentleman: The director will give you some more detail now.

Ms Ekelund: One of the differences between these blocks primarily and the newer blocks on our urban edge is that they are generally substantially larger, so they should be able to accommodate dwellings subject to a reasonable design that will facilitate good solar access into the new dwelling as well as protecting the sun for adjoining neighbours. Mr Corrigan knows the ins and outs of the rules in much more detail than I do, but certainly some of the challenges we have in our newer estates is that the blocks are generally somewhat smaller than has traditionally been the case, and the dwellings are relatively larger compared to the block, which causes more challenges. We would expect that in most circumstances reasonable design could be achieved without having to modify the rules. Mr Corrigan may be able to add some more detail.

Mr Corrigan: Correct. The variation is only amending some provisions of the code. Those provisions that were brought in through 306 still apply. Dorte is quite right. There are a couple of things. That is the first point. The second point is that the blocks are generally larger. The third point is interesting. The provisions introduced through 306, for solar and those sorts of things, are not hard and fast. The codes are set up with rules and criteria. A lot of those have rules and criteria. It means that it is possible for some of these people to take it up. Particularly in the dual occupancies, you need a DA approval anyway; it is not available through the exemption process for dual occupancies. With the designers getting the approval, they can use the criteria of the code to argue certain things.

We are pretty confident that, while all those provisions apply, they will be able to make it work, because generally the blocks are wider; there is the depth. Where it gets challenging, just as a rule of thumb, is usually where it is south facing, the block is staggered down and north is back up the slope. That is where it is most difficult. But again, for the reasons I outlined, with the designers using the criteria—they have to get approvals anyway so they can make the case; they can argue it—there is a whole range of things they can do. They can look at the dwellings next door, look at the existing one, look at their outdoor areas, their living areas. They can work out a design that does not impact on those. We are quietly confident they will be able to achieve it.

Mr Gentleman: It is also important to note that with this variation, if it was to go ahead, there are still the RZ1 provisions in place. Those include provisions for setbacks, private open space, solar access, as we have discussed, and, in particular, setbacks to ensure that people have privacy from neighbouring blocks as well. Those RZ1 provisions will stay in place.

MR WALL: Measures that were implemented as part of variation 306, particularly surrounding the solar fence, are there to preserve solar access for the adjoining blocks, not necessarily the block in question. With the blocks that are subject to DV343, in large part—aside from where there are adjoining blocks that are part of this buyback scheme—the neighbouring blocks are already developed. Will there be some greater flexibility around the solar access criteria given that it may not fit hard and fast in those rules but, as you mentioned, it may not be impinging on a neighbouring block?

Mr Corrigan: The answer is yes. Whoever buys the block and looks at the design—if it is a single dwelling and they just want to get it certified, exempt from a DA, and just go to that building—

MR WALL: Take it down the code compliant route.

Mr Corrigan: They would need to fit within the building envelope. The advantage there, as Dorte alluded to, is that they are larger blocks. They have to take account of their neighbours and those sorts of things. As I was saying—I did not want to get into too much of the technical detail—because of the way the code is set up, there are rules and criteria. If they look at it and they go, "Oh, this is a bit tricky," they can use the criteria and argue a design that they think works. All it means is that they have to get development approval; they cannot get exemptions of that sort. We think that there is enough flexibility that they will be able to argue the case and look at their neighbours and those things.

Mr Gentleman: Mr Corrigan raises another important aspect: if this variation were to go ahead on these particular blocks, or if it did not go ahead, any construction on the block still has to have a development application.

Ms Ekelund: If it is not code compliant.

Mr Gentleman: Yes, not code compliant.

Mr Corrigan: Chair, can I add to my answer before we go on? I have been reminded by my colleagues that under the land rent general eligibility, people taking a land rent lease are not able to own any other real property anywhere. I think that would prevent what you were talking about.

MR WALL: But if they purchase their original block back under the land rent scheme and build two dwellings on it, technically it would only be ownership of one dwelling.

MR COE: One mortgage.

MR WALL: One parcel of land, one dwelling—two buildings on one parcel.

Mr Corrigan: It would depend how the rules are actually drafted. The intent, again, being a housing affordability system, is that if people can afford two houses, they do not need land rent.

THE CHAIR: Could I follow up on the scheme as a whole and the planning changes within that? You mentioned earlier that land rent has been part of the scheme since the announcement. What would be the implications of this draft variation not going ahead for people's decision-making within the scheme already? Are there any implications?

Mr Gentleman: There would be for the owners wishing to purchase. There would be some implications for them. I will ask Mr Kefford to give you some detail.

Mr Kefford: That this would be part of the scheme was announced in October, subject, of course, to the normal processes that we are now going through. There are some owners that we have been speaking with who are very deliberately contemplating this as a mechanism to allow them to stay connected to their community and connected to their area. There are others, as you have heard, who have made submissions to the committee, who see this as an obstacle to them returning to their former blocks, notwithstanding that this is the second of two market transactions in the scheme.

I think the issue that was drawn out in the government's submission to the committee is one around the need to provide certainty inasmuch as we are now at the point of having provided people with their indicative demolition schedules and in many cases we are beginning to actually move into the demolition program, so to be in a position of knowing exactly what the options are is important. But, as I say, in terms of those who are already in, I think there is a mix of some who are counting on doing this and others who are, as they have made submissions to you about, concerned by it.

THE CHAIR: What about people who have gone into the scheme, sold their block to the government, repurchased somewhere else and moved on? Do you think any of their decision-making—

Mr Kefford: That is starting to take us into hypotheticals, but yes, I could see a circumstance where people have made an assessment that they would not be able to acquire or repurchase the block with this permission on it. But I cannot really speak to any particular circumstances around that.

THE CHAIR: In terms of where you currently might have an idea of the value of the land once it is sold, one of the submissions we had from a Mr Fluffy owner was that they had spoken to another Mr Fluffy owner who had been offered their block back at a price that was 40 per cent above the unimproved land value. Is that something that you are hearing as well? Have you also heard that?

Mr Kefford: There have been a very small number, as we have been finalising the process for price setting, where we have gone through the process of getting to set a price. There is one that did have an increase over the unimproved value of that amount. That was not for dual occupancy; that was for a single house. I think the key thing to keep in mind with that is that the numbers that were discussed in the context of the public accounts committee's inquiry in December were the averages across the scheme, and that was the average of a 25 per cent uplift across all thousand blocks, taking both the planning and the cleared blocks in an established suburb as contributors to those. But each of the price setting conversations is an individual one about an individual block, so just because the answer on that one was 40 per cent, that is because the answer was on that one.

THE CHAIR: Was there something particular about that block?

Mr Kefford: I think it has to do with the particular characteristics of the block. It has to do with the average unimproved value in a particular suburb. It may be some distance from what the market would pay for a vacant block in that suburb. We have seen that consistently. We saw that as part of our own work this time last year when we were putting the numbers for the scheme together. But to be clear on that particular one, 343 or the possibility of 343 was not contemplated. That was one of the reasons we were able to take that one forward. As you are aware, the government has decided not to sell blocks that are potentially subject to the variation until this process is complete.

THE CHAIR: In terms of the planning impact of the Mr Fluffy scheme, I think there has been a fair amount of concern, from some submissions and some people we have heard from, that the nature of the suburb is going to change. Do you think that is the case? And how much of that do you think is a result of this draft variation as opposed to the problem that the government is seeking to fix anyway?

Mr Gentleman: As I have mentioned, the numbers are quite small. One per cent of all RZ1 is what we are looking at. It is my view that it will not necessarily change the aspect of a suburb. We have seen changes in suburbs over the years before. I think those suburbs will remain with the character they have at the moment. This will not adversely affect them.

THE CHAIR: I think some people feel that the amenity of their suburb will change. It will not be like the 2003 bushfires, where it was very location specific—entire streets and half suburbs. What sort of assurance can you give around the amenity of a suburb not being affected? One of the questions we raised with other witnesses was: will you be able to drive down a street and see a change that is based on this draft variation, something that is different from what you would see if this draft variation were not in place? Will you be able to tell, if you drive down a street in 10 years,

where there may have been—

Ms Ekelund: Perhaps one thing you might see because of this variation is more single-storey dwellings than would otherwise be the case. You mentioned the significant changes that happened in 2003 after very large parts of Canberra, whole streets, were burnt out. There was a lot of community concern that large houses were being rebuilt to be much more substantial than before. We would expect some of that, but not the sort of substantial change. And of course, we have gentrification happening in our suburbs already. Yarralumla is a very different place from what it was 20 years ago or 30 years ago, and that is just from natural change. Some of these suburbs would have undergone those natural changes over time with the 50 per cent rule for floor space ratio. I would suggest that this variation, if anything, would mean that aesthetically more buildings will be single storey when being rebuilt.

THE CHAIR: One of the other suggestions raised with us was that the dual occupancy plot ratio could be extended. The argument put to us, particularly by architects, was that some of the design outcomes for the dual occupancies might not be optimal on a 35 per cent plot ratio. They had the view that 50 per cent might produce a better design outcome and was possibly more important than being able to have a second storey. Would you agree with that?

Mr Gentleman: There are certainly some aspects of architecture that show different results. If you are looking at a 50 per cent plot ratio that would be available, that could give you a different result. Jim, do you have any views on that?

Mr Corrigan: The 50 per cent and the 35 per cent are consistent with the rules now. The form is a bit different—it allows a bit of extra flexibility—but it is consistent with the RZ2 zones. It is saying that if the block is wide enough for two dwellings to face the street, you get a 50 per cent plot ratio. It rewards the wider blocks. If the block is not wide enough, and it is one behind the other, that is where the 35 per cent comes in. It is quite deliberate and consistent with the principles that apply now. That is what I will say. It is consistent with the changes made in the early 2000s with variation 200 to stop that small one at the front and big dwelling in the back—which gave dual occupancies a bad name, unfortunately.

THE CHAIR: Another question on a different subject was around what will be put on the leases once the blocks are surrendered back through the scheme—not for the first owner, whether that is the original occupant or a new occupant, but with the subsequent sale of that block. What will the lease state on it, and will a subsequent purchaser be able to tell that it has previously been a Mr Fluffy block?

Mr Kefford: There are a couple of bits to that. Yes, subsequent purchasers will be able to know that it was a Fluffy block, because it will be a new lease issued in 2016. The block, in the terms of the lease, will be identified as a block to which the draft variation, as approved by the Assembly, applies, and the intention is that it applies to that block and remains in force on that block.

MR COE: The lease itself will not allow titling? It will just point to the variation?

Mr Kefford: Mr Coe, we are at the point of settling our approach to this now. As I

say, we have not been up to selling blocks yet; we are just about to get there. Certainly the new lease will indicate that this is a block that was part of a program to which these provisions apply. The exact form of that is something we are still working through with the Government Solicitor and our colleagues at planning.

MR COE: It does make a huge difference as to whether it is, in effect, set in stone or not. If it is not in the lease itself, are you saying the lease is going to, in effect, refer to variation 343?

Mr Corrigan: Further to what Mr Kefford said, we are settling now. The lease will probably refer to two dwellings. With most residential purpose clauses—if you were to get your own lease out for your own block, it might just say "for a single residence" or something like that. This may say "for two residences maximum" or some words we will settle on. That will then allow someone to take up the opportunity to do a dual occupancy if the variation goes through and they can go down the unit titling path. Then they have to apply for all of that and get all that set up for them.

MR COE: Sure, but how will things such as the block ratios be established?

Mr Corrigan: Through the territory plan. The territory plan codes will set up all these additional rules, these 343 changes that are being made.

MR COE: Does that mean that 343 is going to list every block and section?

Mr Corrigan: No. It is an important question. Like I say, we are settling on the mechanism. With the territory plan, it is how we define the affected blocks. The variation has been very careful—to word how it is going to be done. If the variation goes through, it will be slightly tweaked, amended, to be very clear that these provisions will continue to apply for just these affected blocks.

MR COE: I am curious as to how someone will ever really find this out. If it is not actually stated in the variation and there is no public register which says that these blocks are special, we run the risk of there being some doubt as to what you can and cannot do. Was it or was it not one of these relevant blocks?

Mr Gentleman: That is what the directorates are working through now with the Government Solicitor—to ensure there is a process in place for that.

Mr Kefford: One idea is a register of the sort to which you are alluding. It cannot be the affected residential premises register, because that is all of them.

MR COE: That is right.

Mr Kefford: It would need to be a separate one that says that these were the blocks that were within whatever scope the Assembly passes and were surrendered under the scheme that this applies to. Yes. One question that has come up in the hearings that we have been speaking with colleagues about is how to address that question which you have asked.

MR COE: I think in some way it is unfortunate that there would have to be a register

which forever names these blocks and sections, but at the same time, if they are going to be treated in a different way, there has to be some form of transparency with regard to the provisions and what it means. In particular, if an owner does not take up the opportunity for a secondary dwelling and then somebody, some years down the track, buys a neighbouring property, how are they going to be informed that the block next door that they have just bought could very well have a second driveway in it that you never thought it could or should have. I think it is going to be quite problematic. I can envisage some very interesting situations in years to come if it is not ironed out properly.

Mr Gentleman: Mr Coe, the whole asbestos eradication program has challenges. This planning answer to part of that has challenges, too. That is what we are working through at the moment. I think all of the directorates are doing a great job in trying to get through in the best way possible for the community. That is what they are doing at the moment.

THE CHAIR: I have some questions around amalgamation. That came up from a few witnesses as well. They are questions around why the government did not consider doing bespoke for every block. I think you answered some questions earlier around spot rezoning. Was there some consideration of amalgamation through the planning considerations? If there was, what was the outcome?

Mr Gentleman: We did have some consideration as to how the community would feel about their residential zone, and that is why we are going down this path.

Mr Kefford: Probably the biggest single obstacle to doing that in any meaningful way is the first right of refusal process. While, abstract from anything else, we could look at the map and say, "There are numbers together and perhaps we could do something," the intervening first right of refusal effectively stops that being a conversation that can happen. There is nothing in 343 that says anything about amalgamation of blocks. Having said that, we continue to discuss, with our colleagues in the LDA and at Community Services, opportunities for surrendered blocks to be acquired and used by those agencies. The sales document that we released a few weeks ago makes it clear that the first right of refusal trumps everything. The step in between that is the LDA and CSD, and the urban renewal coordinator-general as part of that process, and then public auction. In terms of going beyond a "Yes, there are all sorts of things we could do" conversation, we have not progressed, because that first right of refusal is the first gate.

THE CHAIR: More specifically on that, some witnesses also talked about the NEAT competition, the housing typologies work, and whether or not there was an opportunity to progress that project within this scheme. Is that something that has crossed your desk?

Mr Gentleman: It is not something I have discussed in detail with the directorate or LDA at this time. I would be interested to hear whether the committee has a view on in that regard and also whether any of your submissions have talked about that.

THE CHAIR: There was support from a number of witnesses about that project itself and what it could provide for the community.

MR COE: With regard to the scheme as it affects the current owners of the Fluffy houses and when the blocks will come onto the market, I understand there is an option for owners to rescind sale agreements prior to actually vacating the property. Is that correct?

Mr Kefford: Like any contract, Mr Coe, it is open to the parties to agree to not proceed.

MR COE: Has the task force or the government expressly said that owners of Mr Fluffy blocks may rescind any agreement which has been entered into?

Mr Kefford: We have had a conversation with a number of owners in that space, yes—most recently with the group who are wishing to not surrender their block before they get the sale price. It has always been the case that they are able to stay in their home up until that time. I think the overarching consideration in all of this is that participation in the scheme is voluntary. So yes, there is a contract. There has to be; there is a significant amount of public money changing hands, and it is an important process. But, at the end of the day, the scheme is voluntary, and if the parties agreed to not complete it, that is one option that is open.

MR COE: In the event that somebody has had the valuation done, agreed on a price and signed their contract with the government, do they have an opportunity to back out of that?

Mr Kefford: Yes.

MR COE: Unconditionally?

Mr Kefford: At the end of the day, this is a voluntary scheme, Mr Coe.

MR COE: Despite the fact that their contract has been signed?

Mr Kefford: Any contract the parties can agree not to complete. So—

MR COE: It depends when it is enacted, when the contract is deemed to be enacted.

Mr Kefford: Sure, but in terms of this process, the way the conversations are now happening is this. The owners needed to opt to participate or at least to ask for a valuation by 30 June. It is then made clear that, as that process works out with the valuations, the offers, they have 60 days to respond. We then exchange on the deed. There is another 60-day window. Rather than have options sitting in some vague space before agreement, so that we can bring houses into the demolition schedule as that is efficient and convenient, we are encouraging the last owners who are yet to make a decision, if they wish to keep the option open to participate in the scheme but want to wait until they get the land sale price, to go through the scheme and exchange on the deed with the deferred settlement. If, at the point where, in keeping with the document, which will be around six months before demolition, we give them the sale price and they decide not to proceed, then yes, it is open to them to not complete that transaction.

MR COE: So somebody could have exchanged contracts with a deferred settlement and could stay in the house until 2019 or 2020?

Mr Kefford: Yes.

MR COE: Then at that point say, "Actually, I want out of this contract," and seek other options.

Mr Kefford: That is possible. I do not think very many will do that, but it is possible. We have said that to a number of owners who are intent on that being their approach.

Mr Gentleman: If that decision was made, do you see an impact on this variation?

MR COE: It brings into question when the blocks actually become available and what certainty there is as to when these potential 743 blocks come onto the market as either reconstruction of a single dwelling or as a dual occupancy. To that end, it will be interesting to see if we have got many houses, many blocks or a single block—who knows?—that are subject to this variation but where there is not going to be any real impact for another four or five years. And by that stage, who knows where dual occupancy or a multi-dwelling policy will be at.

Mr Kefford: Within the scheme, Mr Coe, owners have until the last settlement date we have all agreed to, June 2020. While there are 933 who have now said yes, and we have 730 now in our possession and we expect to have all of those demolished, we are expecting that by Christmas about 800 will have been surrendered. The demolition schedules we announced have us completing the bulk of that work, apart from the ones who have chosen the longest possible settlement, by the end of calendar 2018, early 2019. The majority of the blocks are already inside the scheme under contract, and 730 of them have settled. The vast majority of those will be coming to market progressively, in keeping with the demolition schedule over the next three calendar years that we have published.

MR COE: On a separate but related issue, with regard to houses that have had renovations done to them, especially renovations recently, following the Downer Mr Fluffy house, where things seemed to change a fair bit, were many houses given approval for renovations? Did approval have to be sought for renovations done after this last couple of years of interest?

Mr Kefford: I will defer to my planning colleagues about that. In one sense, the original clearance certificates from the original program of the 1990s say, "This house was part of the program. There is residual asbestos in the walls. Talk to building control if you're doing work." That process has been in place all the way through. Downer was discovered; it was demolished. I should remember the history of it. We got the report at the end of 2013. It took some time from when it was uncovered to get that report, because of the way we did the demolition. From the point we had the report, had that information about where the asbestos had gone through the house, to when we put out the letter in February of 2014—the report on the Downer property was received in, I think, October of 2013. There is material that the task force has published that sets out the legislative and regulatory framework, but since the original

program there have consistently been reminders in the system, in ACTPLA's building approval system when that sat with you, and with Access Canberra, that were intended to flag, and did flag, the fact that it was an affected house.

MR COE: Is it possible that, following 2013, DAs or BAs were given for Mr Fluffy houses?

Mr Gentleman: Is there any indication that that occurred?

Ms Ekelund: They would have had to have asbestos mentioned in plans et cetera for minor works, but I cannot imagine any significant changes to the homes would have been permitted at that point in time. Again, it is really a question for Access Canberra and Mark McCabe.

Mr Corrigan: That bit now sits with Access. We will take it on notice.

MR COE: If you are able to.

Mr Corrigan: There are some where there were renovations underway in the course of last year. So yes, there were houses that have been worked on all the way through, including very recently.

MR WALL: To go back to the properties being on a register or how the properties subjected to this variation are going to be identifiable into the future, is there going to be any provision or protection on those blocks to protect against future changes to the territory plan that might impinge on the rights that are going to be available at the point of sale should this variation go through?

Mr Gentleman: It is an interesting question.

Ms Ekelund: I think that is the sort of thing we are trying to finetune at the moment—whether there is a five-year sunset, whether the rules are going to be able to sit with the block forever. It is a real question that we are grappling with at the moment.

MR WALL: To go back on that point a bit further, there were some questions the committee initially had about these provisions that the variation gives the blocks subject to the buyback—whether they stick with the block just for the initial sale or if they are with it for subsequent transactions of that parcel of land.

Ms Ekelund: It is probably likely to be a case where the provisions will remain with the block unless there is greater flexibility given. It is generally the case in planning, though it is not always the case, that we do not take rights away from what the underlying lease will permit. It is usually more layers of flexibility around it. But we really have yet to finalise it.

Mr Corrigan: In the same way that the 2003 changes are grandfathered in the relevant documents, that is one approach we are contemplating. The intention behind it was that the blocks would be sold with this permission attached, which owners may or may not choose to take up. I suppose the other issue that feeds into this is that the

first property that is built there may well render the rest of it redundant inasmuch as if a 50 per cent plot ratio single dwelling is built, it will not be permissible to do a second one at any point in the future.

MR WALL: The question would be: in 20 years time, if someone wanted to redevelop that block, would they be able to go back to dual occupancy if they built a single dwelling at 50 per cent in the first instance?

Mr Kefford: The intention was that, subject to the normal approach that the director-general has outlined, the conditions of 343 that have been part of the scheme since it was announced would continue. So yes, the answer to your question, while hypothetical, would be yes—in the same way that it is in the relevant documents now about a block that had these permissions before, I think, 2003. Jim, this is yours, not mine. They are written in at the moment.

MR WALL: I guess there are a lot of hypothetical questions about this; we are dealing with a variation that has a broad effect on a substantial portion of blocks.

Mr Kefford: They are questions that it is helpful for us to have a conversation about; I am not saying they are not. But in terms of the intent, going all the way back to October—never mind when the variation was published as part of the statutory process—with the blocks to which this was applied, this would be something that would stay with those blocks.

MR WALL: At what exact point does a block come under this scheme? Is it when the government takes possession of it under the buyback or is it—

Mr Kefford: No. Assuming that it is passed, the mechanism is that at the end of the demolition—all of the blocks are now on the affected residential premises register. At the end of the demolition process, there are three documents that need to be presented to the task force to justify a property being taken off—the building approval for the demolition, the asbestos assessor's report on the demolition and the subsequent soil audit process. Once that happens, we remove the block from the register under the minister's delegation. At that point, we can instruct on the issue of the lease. So it is at that point, assuming the Assembly has finished its processes, that it becomes live.

Ms Ekelund: If I can clarify, the variation refers specifically to surrendered residential blocks. The variation refers specifically to rules applying under the surrendered residential blocks. So they do need to be part of the buyback scheme for it to kick in.

MR COE: With regard to the financial impact of this variation, based on my questions earlier, if you are unable to estimate how many blocks will take up the dual occupancy provisions, you are, I guess, also unable to estimate the value of this variation?

Mr Gentleman: Indeed, Mr Coe. It is subject, of course, to the variation being approved. If the Assembly does not approve the variation, there is no uplift at all for the asbestos eradication scheme.

MR COE: So you do not have a figure? If you are unable to advise what the possible take-up is of the number of dual occupancies, you would be unable to work out the potential value.

Mr Kefford: Mr Coe, you are right. We do not have a figure that specifically relates to how much we think the draft variation creates. The way we did it—just coming back to some of the discussions earlier about the assessment of the blocks when you were last asking questions—was based on the process that we went through, with an assessment that the ratings were average, good or unacceptable. Our assessment, which was conducted for us, was that about 10 per cent of them were in that not viable basket at a desktop level. That was not going into the detail of the design. The expectation is that, with clever design, it might be possible on most of them—theoretically possible on most of them, subject to the intervening decisions of the owners. The estimates that we did—as part of our work last year that ended up being the submission that the government made to the commonwealth for assistance—assume, on average, across all of the blocks, an uplift of an average of 22 per cent—across them all.

MR COE: All the 1,000, not the 743?

Mr Kefford: Yes. That uplift took account of both a premium for it being a clear block in an established suburb and the impact of planning, working on an assumption that most of them that would be subject to the draft variation as proposed would have some impact. That figure was based on some work that we did with our colleagues in the Treasury and the valuers that work with the Revenue Office in terms of the rates base. We did a small process, again a desktop process, as part of that to get a sense. At this stage, we have no better information yet, because we have not sold any.

MR COE: Finally, with regard to land rent, you mentioned earlier that that was in effect some people's only option to rebuild or to move into another property.

Mr Kefford: Yes.

MR COE: What are some of the stories or circumstances that you have come across?

Mr Kefford: I think it is one option rather than their only option. The intention behind offering land rent was that it was another existing policy tool that the government had that could be brought to bear in dealing with this issue in all of its aspects. In terms of the purchases, we have seen everything from acquisition of a property from the original owners who built the house when what is now an established suburb was dirt and who paid Dirk Jansen to put the stuff in in the first place, through to people who bought a property relatively recently. Clearly the financial outcomes generally were very different in those circumstances. If people had a very lovely home but a significant mortgage, while the net financial position, having been paid the market value, is the same, that is obviously not a practical living circumstance. Someone who has owned the property outright for a long time is in very different circumstances.

As I say, one of the reasons the land rent was established was as a housing affordability measure. There was a view taken as part of the overall response to the

issue last year that this was one more thing the government could do to, in effect, provide further support to people who qualify for it to return to their blocks. Part of the legislation that is being done is to extend that into the established areas, where it is not available because it is a blank piece of dirt process.

MR COE: You said there were 700-odd blocks that have settled already?

Mr Kefford: It is 728, yes.

MR COE: Of the 300-ish that have not settled, do you have an estimate of what number or proportion of those would be holding off for financial reasons as opposed to having a particular connection to their house—in effect, they would be happy to leave but financially they are staying put?

Mr Kefford: More commonly, that conversation is more about wanting to know the sale price for the remediated block rather about than the offer. There are 931 who have agreed to terms. Of the remaining 60 who are yet to make their decision, some of those are talking about the financial impact as one of the reasons why they do not want to complete the surrender process. But the conversation is very much about wanting to know the sale price before they have to make that decision finally.

MR COE: I imagine there are some people that may well want to stay in their house, albeit with Mr Fluffy in it, until 2019 or 2020, so they can at least make inroads into their mortgage and then take the settlement.

Mr Kefford: The scheme permits them to do that.

MR COE: And then go from there.

Mr Kefford: Yes; the scheme permits that to happen. I have not had a conversation with owners who are in those particular circumstances, but that is not to say it is not a possibility.

THE CHAIR: Is there anything else you would like to add for us today or anything we may not have covered?

Mr Gentleman: Yes. In closing, thank you to the committee. All the questions that have been taken on notice will be responded to in the appropriate time frame. Can I say, as I did during the hearing, that this is a challenging process for the whole community as well as for us in government. It is an opportunity for the whole community to respond to that challenge and give the best outcome we can for the Canberra community.

THE CHAIR: Thank you. We appreciate your time today. To enable us to get the final report done, could we have those questions on notice answered before, or at the very latest by, 9 October. If there are any difficulties in that process, please let us know.

Mr Kefford: I will check with the secretary; I think we have answered a couple of them at the table, but I will come back on the others.

THE CHAIR: Many thanks.

The committee adjourned at 3.29 pm.