LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL

(Reference: Inquiry into engagement with development application processes in the ACT)

Members:

MS C LE COUTEUR (Chair)
MS S ORR (Deputy Chair)
MS T CHEYNE
MR J MILLIGAN
MR M PARTON

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 10 SEPTEMBER 2018

Secretary to the committee:
Ms Annemieke Jongsma (Ph: 620 51253)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 9.03 am.

GINGELL, MS CHRISTINE, Friends of Hawker Village
MOORE, **MR PETER,** Kingston and Barton Residents Group
FOGERTY, DR JACKY, Hughes Residents Association
DENHAM, DR DAVID AM, Griffith and Narrabundah Community Association Inc.
DOBES, DR LEO, Griffith and Narrabundah Community Association Inc.
CULLY, MS RUTH, Hughes Residents Association

THE CHAIR: Welcome to this public hearing of the Standing Committee on Planning and Urban Renewal on its inquiry into engagement with the development application process in the ACT.

Today we are going to be hearing from a panel of community groups, residents and community associations: the Property Council, the Master Builders Association, the Australian Institute of Architects, the Planning Institute of Australia, the Macquarie residents group, the Environmental Defenders Office and a number of community groups and individuals with interests in environmental and heritage matters. Thank you all for coming.

Proceedings are being recorded by Hansard for transcription and are broadcast and webstreamed live. I draw your attention to the pink privilege statements which are on your table. Can you please confirm for the record that you understand the privilege implications of the statement?

Ms Gingell: Yes.

Mr Moore: Yes.

Dr Fogerty: Yes.

THE CHAIR: Thank you. Before we go to questions, would any of you like to make an opening statement? Ms Gingell, please start.

Ms Gingell: Our interests encompass planning and environment matters generally, but more specifically the impact of planning decisions on the residents of Hawker, Weetangera, Page and Scullin. We are very concerned about the negative impact of multi-unit development in RZ2 zones and multi-unit redevelopment of Fluffy blocks and dual occupancies in RZ1. Acting on those concerns has required us to engage with the development application processes and also the review of planning decisions by the ACT Civil and Administrative Tribunal.

With regard to the public notification process, we believe notification of development applications should be published in the *Canberra Times*, in an abbreviated form, because not everyone has the skills or technology to access a website. Any DA lodged in the month of December should have an automatic six weeks for submissions to be made. To facilitate engagement, a simple guide to the planning system should be readily available to residents.

Accuracy and completion of DA documents has been problematic. We believe that there should be adequate skilled staff to scrutinise applications to ensure that all relevant documents have been submitted and forms completed prior to notification. We have encountered missing documents, incomplete forms and inaccurate DA descriptions.

Project proponents will often assert that pre-DA community consultation has occurred. Our experience is that community consultation for larger projects takes the form of a presentation, more akin to a marketing exercise, after the design decisions have been made. For smaller developments, pre-DA consultations with neighbours may not occur, and we believe they should be mandatory.

We would find it extremely useful to have access to DA documentation for a time period after a notice of decision has been issued. It would also be useful for those who have made a submission to have access upon request to the T documents, the DA file, as soon as the notice of decision is issued. These documents are currently only available to parties after an ACAT review commences.

The statements against rules and criteria of the multi-unit housing development code are confusing when they do not provide a full statement against all rules and criteria. We believe a standard format should be enforced whereby all rules/criteria must be addressed, stating whether the applicants assert compliance with the rule or are relying on criteria. If relying on criteria, a clear statement of how that compliance is achieved should be required.

Let me go to the more substantive issues. We strongly believe that the presumption that rules/criteria ensure that zone objectives are met is a false premise. Blocks are not homogeneous, and site location and character, as well as impact on neighbours, need to be given more weight in the assessment process.

In the assessment of DAs, where the proponent relies on criteria for compliance, it is our experience that assessing officers are far too lenient. Rules are drafted for a purpose, and the application of criteria should not undermine the intent of the rule. We accept the need for some flexibility, but generally there should be compliance with rules. Any deviation should be minor, especially when neighbours have objected to reliance on criteria.

Tree protection is expected by many in the community but engagement shows that it is inadequate under the current process. Developers have come to expect a blank canvas, and usually get it, rather than design around trees. The planning authority supports these developer expectations by permitting removal of trees through its internal review group. In established areas, it is in part trees that create the character of the older suburbs. Trees are also important to mitigate the heat island effect and to visually obscure the bulk and scale of infill developments.

The conservator focuses on tree species and tree condition, but we believe the focus should be on contribution to the character and residential amenity of the area. The only requirement is for the authority to consult the conservator, and there are no appeal provisions available to those who want the trees to remain.

Currently a DA proponent may seek internal review of a decision. Requests for reconsideration are effectively a second bite of the cherry, having lodged amendments after a decision has been made. It appears that it has become the practice to permit lengthy extensions of time for developers to lodge reconsideration applications. From the perspective of residents who supported the original decision, having to come to grips with revised plans months later is unreasonably onerous, and the time for comment inadequate.

ACAT's review powers do not meet the needs of non-developer applicants. Tribunal members cannot consider the extent to which zone objectives are met, and focus only on compliance with rules and criteria. It is essential that the tribunal has the power to reject proposals that do not meet zone objectives and also to reject proposals on the basis that insufficient trees and vegetation have been retained.

Rezoning is a serious concern to Friends of Hawker Village when developers purchase leases which have been granted for recreational purposes and then claim that the permitted activity is not financially viable and seek changes to zoning and leases. This means that the community loses the land set aside for recreational purposes.

Lack of enforcement of landscape plans is a problem. We are aware of developments where landscape plans have not been fulfilled or where they may have been fulfilled initially, but at a later time landscaped areas have been converted to hard surfaces. There appears to be no recourse when this occurs.

The focus of assessments appears to be on the amenity of those who will be living in new developments, with scant regard for the residential amenity of existing residents. In its current form, the multi-unit housing development code does not meet the objective of limited change to established suburbs as expected by existing residents.

We believe that the number of dwellings is a simplistic approach to assessing the suitability of a block for a particular proposal. On-site parking requirements are often grossly inadequate. Calculation of site open space includes any area that has a dimension of 2.5 metres and is not a building or driveway. This approach means that, in most cases, site open space comprises mainly the mandatory setbacks and in many cases does not meet the rule.

The cumulative effect of densification is not addressed, as each DA is considered in isolation. There are inadequate requirements to ensure that large trees are retained. And there is no requirement for grassed areas, and I mean real grass, not plastic. Generally, environmental issues do not receive sufficient weight in the assessment process.

Thank you for hearing me. I acknowledge that I have read this privilege statement.

THE CHAIR: Thank you. Are there any other initial statements? If so, I make a suggestion that we keep them reasonably short. If we do not, there will not be much time for questions. We start at one end with Mr Moore.

Mr Moore: Thank you. I am representing Kingston and Barton Residents Group. This is a community organisation committed to enhancing the social, residential,

environmental and economic qualities of the area. We are working to ensure high standards of liveability for our community. Our objectives include representing, negotiating and lobbying on matters of concern for our residents with particular reference to residents' amenity, good urban planning and the quality of our community assets.

You will have noted in our submission that we commend this committee for undertaking this inquiry. We hope that it can lead to a range of improved and more rational community-responsive decisions that will help restore the community's trust and confidence in the government's DA process.

I will provide some background about Kingston. Residences in Kingston comprise 89 per cent apartments. The increase in population density since the 2011 census is around 80 per cent. The green space of earlier single houses has been greatly diminished. Kingston now has only one tiny toilet-free park. It is commonplace for insufficient residential parking to be provided for apartments. This is a DA matter. In particular, parking is difficult in the Kingston centre, the foreshore and most of the surrounding streets.

In the two new commercial developments in Kingston centre, poor DA processes and decisions caused the loss of 56 car parking spaces—public car parking spaces—against the expressed and ignored advice of the community. The Supabarn and apartment development allowed for downsized parking of 33 spaces taken from the public allocation of replaceable car parking spaces. The new Geocon hotel was allocated 21 spaces for 63 apartments where 43 should have been applied under the parking code.

The direct result is that these poorly conceived decisions have created crippling problems for traders in the Kingston centre. We are recommending that correct parking allocation must be applied in all future developments in the Kingston group centre, the Kingston foreshore and Eastlake.

Our submission No 39 contains 12 specific recommendations to improve the current process. These are based on our members' and our community's recent, direct and extensive experience of flawed DA process that have eroded our members' confidence and trust in a crucial mechanism of government. Bad DA decisions are having major impacts on the amenity and liveability of our community.

These 12 recommendations are supported by examples and comments. They are based on our organisation's and members' experience. We offer these comments and recommendations in a sincere effort to make constructive improvements to a system that continues to cause significant concern, and often distress, to many members of our community.

We have noted that a number of other community submissions have also recorded widespread lack of trust and confidence in the present administration's decisions under the government planning system. The community has pleaded with government to asses and evaluate DA applications fairly and sensitively and to properly take into account the damaging implications of many of their decisions. I particularly cite submissions 44 of the ISCCC and 43 of John Edquist.

We note that the ACT Auditor-General has also expressed serious concerns relating to inadequate safeguards, certifier issues, improper influence and poor monitoring, lack of transparency and documentation, inadequate documentation of decisions by the directorate and lack of peer reviewing. I believe the Auditor-General found that more than 28 per cent of approved DAs should not have been approved.

We note that the ISCCC has also made 14 recommendations to improve the planning process, and we support all of these ISCCC recommendations. We are aware that there is another relevant inquiry on building quality. We believe that there is a real overlap between these two inquiries. We strongly recommend that developers and builders that have been found to fail in areas of quality and application of regulations need to be closely monitored and penalised, and to be most stringently assessed in the DA approvals process. They need to be outed, recorded and watched.

I think that there are also some other matters in the background. I draw the committee's attention to three other matters that are of concern to our community and where improvements could contribute to increased trust and confidence in government processes, including DAs.

The first is the uncertainty and the apparently opaque consideration and decision-making process of government when the community objects or seeks amendment to elements of, the size of or the substance of a DA. Because of the opacity there is no confidence that the community view, no matter how minor or justified, has ever been considered, let alone evaluated, before being rejected by decision-makers. Adequate justifications for decisions are not provided and they are not explained. That is one issue.

The second is the continuing paradigm of the expensive, legalistic and clumsy process-driven ACAT appeals mechanism. Because of the nature of the orientation and expense of appealing to this mechanism, it is the community perception that, in effect, a proper appeals mechanism is not available to individual citizens or to community groups. The area of ACAT dealing with the DA process must be reviewed. I think it must form part of your review. It must be substantially modified if it is to become a realistic and equitable review process and acquire any confidence from the community. ACAT has lost the confidence of the community and that needs to be rectified.

The third issue is that the community holds grave concern in regard to the EIS process and its related DAs. The Fyshwick waste EIS demonstrated that pre-DA consultation is a must-need for industry sites. I suggest that the committee carefully examine Ms Russell's submission—that is No 32—for a chilling exegesis of the extent of this flawed process.

There has been strong and very vocal public opposition resulting in three inner south community meetings involving hundreds of people and 464 public submissions, with 95 per cent rejecting the location. As a result, the chief planner and director-general of EPSDD, Ben Ponton, has cancelled the direct sale of unleased territory land, which had previously had ministerial approval. Mr Ponton has also announced a change to refuse a notional decision on the approved DA because the proposed use was contrary

to ACT legislation. Yet that DA was approved. Had the proponent put forward—

THE CHAIR: Mr Moore, could you wind up fairly soon? We suggested five minutes for opening statements. I am concerned to give everybody a fair turn.

Mr Moore: I think I have said enough. I just want to thank the committee for the opportunity to express these views—

THE CHAIR: Thank you.

Mr Moore: and also I have read and understood the privilege statement.

THE CHAIR: Thank you, Mr Moore. The other thing I emphasise is that this is an inquiry into DAs, DA processing and DA consultation. It is not an inquiry into the Territory Plan or what zone should be where. Those are important issues but they are not the issues that we are looking at today. It is the process; it is the engagement; it is how the DA system works rather than where the zones should be et cetera. Dr Fogerty, you suggested that you want to make a statement.

Dr Fogerty: Yes, if I may, thank you.

THE CHAIR: Certainly.

Dr Fogerty: Thank you very much for hearing from us today and for allowing us to make a submission to this very important inquiry. Our natural and cultural heritage, Canberra's sustainability and the future quality of life of its citizens depend on getting these processes right.

Our association and other local community organisations were very pleased to be invited to work with the ACT government on an integrated plan for Red Hill nature reserve and surrounds. We have also provided input on the development of the Curtin master plan and the Woden precinct code, amongst others.

We believe that this is the model that developments in public areas should follow. In town centres, shopping centres and public open space, and particularly in environmentally sensitive areas such as Red Hill nature reserve, development should always be preceded by a comprehensive, government-run planning and consultation process for the entire area. This ensures that the design and parameters for development in public areas are determined by the government and residents, local businesses and other local organisations, not on a block-by-block basis by developers.

We strongly believe that, while development of and consultation on such comprehensive plans are underway, development applications should be formally held over. Like thousands of local residents and other community organisations, we are deeply disappointed that development applications are currently being considered while the government is still consulting on overarching plans for the affected area.

This is the case for section 66 Deakin on Kent Street, where a development application is currently being considered for a multistorey storage facility on endangered yellow box-red gum woodland. This section is specifically included in the

government's integrated plan for Red Hill and surrounds which is currently being developed. The DA is for a massive 41-fold increase in the building footprint, which was deliberately restricted in the original lease precisely because the site was woodland.

It is also the case for Curtin Square, where a DA for multistorey mixed use was recently resubmitted, even though the Curtin master plan is just being finalised. It makes a mockery of consultation and planning for the government to make decisions on such DAs on an ad hoc basis while these processes are still underway.

On the issue of consultation, we believe that consultation sessions should be run by the government, not by developers, for any development which requires a Territory Plan variation, major lease variation or other major impact or relates to a site for which there is known community interest. Show-and-tell sessions run by developers, with only the developer providing feedback to government, do not constitute consultation.

In our submission we make several recommendations relating to the current lack of accessibility, transparency and accountability of development application processes. One recommendation that we particularly draw to your attention is for the system of consultants' reports for development application processes to be overhauled to restore community faith in the assessment process.

As an example of why things need to change, the Environment, Planning and Sustainable Development Directorate earlier this year decided to assess the section 66 Deakin Kent Street development on the merit track rather than the more rigorous impact track. This decision was based on an environment assessment report supplied by the developer, which wrongly stated that the section comprised degraded exotic vegetation.

In fact the ACT's own senior government ecologist had previously surveyed the section and reported that it comprised predominantly endangered yellow box-red gum woodland. We understand that, following a site visit from EPSDD at our invitation, more information is being sought from the developer. However, this is just not good enough.

Developers and their paid consultants have a clear conflict of interest in assessing these matters. Our precious natural heritage deserves better and so does our community. On this point we have also recommended that an impact track assessment should be automatically triggered when there is a high level of community concern about a proposal, as demonstrated by, for example, the number of submissions.

Thank you again for this opportunity. We trust that your inquiry will bring about much-needed change to our current arrangements to ensure that Canberrans have a real say in the future of our neighbourhoods and that development is based on the best interests of the community, not those of developers.

THE CHAIR: Are there any other opening statements?

Dr Denham: Yes. I would like to thank you, Madam Chair, and the committee for

giving us the opportunity to contribute to this investigation which you are undertaking. We have made a series of recommendations which we believe will produce more transparent, simpler and improved compliance and better outcomes for our city. In the five minutes I have today, I want to focus on three recommendations which go to transparency and three which go to simplifying the process.

The first one on transparency is that all DAs—I think this was said earlier by Christine Gingell—and associated information, including plans, should be available on the government website. In particular, all knockdowns and rebuilds that are currently DA exempt should be processed through a standard DA, because a knockdown rebuild affects the whole street, not just the neighbours. Right now, with the way the legislation works, it is not essential for the developer to even advise the neighbours of what is being done. I would like to table this, if I may.

THE CHAIR: Certainly. The secretary will get a copy of it.

Dr Denham: You can have it; it is all yours. The neighbour did not know what was going to be built. This goes down about five metres into the basement. The pole that supports the electricity that comes in there was deemed to be unsafe by Evoenergy. The poor neighbour not only has to put up with this big basement but there is this huge, big block of concrete in her block, and she will have it there until the whole building is finished. If it had gone through a proper DA, Evoenergy would have been able to look at that and identify that problem.

We have other examples of this in Griffith. That is the first recommendation. Knockdown rebuilds affect the whole street. It is not transparent, having regard to the way things are going, and that can easily be fixed by putting it through the DA process.

The second one is that secondary DAs should also be made publicly available. They are not now. We have had situations where a DA has been approved and it abides by the rules, and the criteria; then they have gone in and changed it and the whole of the basement area now fills the whole block, and there is no room for planting of anything. There is no appeal mechanism; nobody knows about it. The thrust is that all DAs must be publicly available. I am not saying that you should have one for building a kennel or something like that. But for a knockdown rebuild and for these secondary DAs, they should be publicly available.

The third recommendation is that the conditions for pre-DA consultation should be tightened, because developers are now submitting applications in smaller bits that do not require DA consultation. For example, with the one at Manuka, where the cinema is being done, one bit is being done, and that does not comply with the guidelines now. With the next bit, where the cinema is, if they put them both together, which is what they should do, there should be pre-DA consultation. Those rules should be tightened, and we would get a better outcome—things like pedestrian spaces and looking at the whole arrangement. Those are the three recommendations for transparency.

On simplification, with the first one, you should be able to do this: wherever possible, development applications for lease variations and the building proposals that go with those variations should be considered together. You would think that would be

sensible, but that is not how it works in the planning department now. They are done by completely separate parts of the department. They should be done together and if they cannot be done together then the lease variation should be done before the building application.

The second one is that subjective criteria should be eliminated from the codes. We have heard this morning about the confusion. I know this goes to the Territory Plan, but if this were done it would assist the process for looking at applications. We think the rules in the codes are really pretty good. So why don't we just use those? Any architect worth his salt should be able to design suitable buildings that fit the rules, particularly with things like solar access. The rules are there; why not use them? But these subjective criteria are there. It would make the process simpler. That is the second one. I have only got two more.

Plot ratios should be abandoned. Again this goes to the Territory Plan, I know. But we should be looking at outcomes. And this is what we get with the current rules, which are mandatory. They are useless; we do not really know what they are supposed to be doing, except that the blocks are still covered with concrete. That is another one. We will not go into that now, but what are the plot ratios for? This is a Territory Plan thing, so I will not dwell on that anymore.

The final one—and this could be done, and I think it would be a very good thing to do—is that we should have software developed whereby anybody can go to ACTmapi, which is a fantastic facility; it is absolutely brilliant. You should be able to click on that and all the leases and the building codes that apply to that block should be there. Now, you have to go through the definitions, you have to go through the multihousing development code, the residential codes and the Territory Plan. It is crazy. That could be done, and we would have a simpler, fairer process.

I do not know whether Leo wants to add anything, but I have finished for today, unless you have any questions.

Dr Dobes: I would like to put a slightly different proposal on the table, from an economist's perspective, that is, that what we have at the moment are rules and criteria. The criteria appear to favour developers because they could be interpreted subjectively by people in government who are in contact with developers. I support everything that has been said, particularly by Dr Denham, in terms of eliminating criteria totally, and sticking only to rules, but forcing developers and builders to get agreement from their neighbours to make changes to rules. This would simplify the process tremendously.

The government, or at least people who work in the government, do not have the capacity at the moment to look at everything. Simply by forcing the developers to get agreement from neighbours to any alterations—encroachments of the rules—would get over all these problems.

What I am talking about is basically a tragedy of the commons where developers come into a leafy area and chop down all the trees and so on. Because they like to live in a nice leafy area, they end up with a big block, large house, no trees, no vegetation and everyone else suffers. This is a pure example of the tragedy of the commons.

I would be very grateful if the committee could consider this aspect as well and not just getting people to stick to the rules and criteria. Eliminate the criteria totally. Thank you, Madam Chair and the committee, for listening to me. I acknowledge that I have read and understood the privilege statement.

THE CHAIR: Thank you, all for your statements. The overwhelming message is that the current system is not working. Some of you had some suggestions to how to change it. Does anyone want to speak a bit more about not what sort of Canberra we are producing—whether it should be multiunit or whatever; that is not relevant—but what we could do to change the DA system to make it better?

Ms Cully: From our point of view there are perverse incentives in the current system. If a developer submits inaccurate, incomplete information—as we have many examples of—that can be used to evade proper public scrutiny. For example, a development that is wrongly presented as code track does not even trigger the merit track requirements of notification of neighbours. Next level up, a development which should be impact track, if through an inaccurate environmental statement is slotted into merit track—

Dr Fogerty: Can I interrupt here. I should have tabled this at the time and put a photo of it on the record. This is the supposed merit track assessment. You can see here this is what the developer described as, "degraded exotic vegetation". These are photos taken this year and last year of the degraded exotic vegetation on the endangered woodland on section 66 Kent Street. This is an example of the department using material provided by the developer to make a decision on the track.

Ms Cully: This area is high value, critically endangered, yellow box, red gum woodland with rare and endangered species. If there was a requirement for all DAs to be submitted in such a way that there is the opportunity for proper public scrutiny and that there is a disincentive for developers to provide inaccurate and incomplete information, it would be a self-correcting system. The problem is that residents groups, who are volunteers with limited resources, are in effect the default scrutineers of this information because the directorate simply accepts it on face value.

THE CHAIR: As you said, they are voluntary groups. How do you maintain the energy to do that scrutiny?

Dr Fogerty: In this case because we love the area. We love it; we want to preserve it for posterity. We do not want to see the trees bulldozed and the wildlife without a home.

THE CHAIR: Do others have views on the energy required for public contributions into the DA process?

Ms Gingell: It is an enormous amount of work and time. Even within an organisation, preparation of submissions, checking them and looking at all of the plans is an enormous effort. It is very tiring, especially when you go through the process and you go to the tribunal and the focus on the rules and criteria and the leniency that is permitted even in the review process makes it seem like you are really in an uphill

battle and that the situation is unfairly stacked against you.

Dr Dobes: Perhaps we could just add that just about everything we have heard this morning from the other groups we totally agree with, including that very last comment. You have no idea of how difficult it is for volunteers, who work full time perhaps and do other things, to get across something. And they are usually left with the feeling that the developer has already been talking to the government. They have put forward their proposal knowing that it will get through and there is nothing that will stop it. That is very hard to work against.

MS CHEYNE: I very much appreciate how time consuming it is, and I think you have all touched on just how complicated and confusing the processes are. As organised associations, what have you done to upskill yourselves and each other in your organisations, and how time consuming has that been?

Mr Moore: We work very closely with the traders. We do a lot of cooperative projects with the traders; we have joint meetings and we develop proposals together. We are not just a community group; we see our community as not just the residents but all the people who are participating in living and working and enjoying the Kingston-Barton area.

We also work closely with people like the heritage commission. That area, if anywhere, is the treasure house of heritage for Canberra and we have to preserve what little new heritage we have. There are some significant bits and pieces that must be preserved.

We would love the planning department of government to be a partner with us. We would love the developers to be a partner with us instead of the system we have now where the developers game the system, stitch up deals with planning people, construct their proposal so they utilise every loophole possible and then dump a situation onto the residents and traders and the larger society of Canberra who enjoy the area we live in.

Dr Dobes: We upskill ourselves in two ways: one is learning on the job by learning from other people and reading plans and getting someone to help you understand them and so on. But we also go to government, and some of the officials that work in government are very helpful in explaining things to us. We write these things up, we write up processes, and we put them on our website so our fellow residents can understand what is going on.

We have on our website, for example, a very easy to understand explanation of the difference between plot ratios and private open space. We also have an information sheet on DA exempt developments to explain how that process works, but we are still confused as to how it works.

MS CHEYNE: Have you done this because there is a void from government?

Dr Dobes: Yes, indeed. You cannot just find out information easily. We have, for example, talked to George Cilliers, who was very helpful to us. He, explained the whole process and then we wrote it up so that we would remember it and so that other

people could read about it. Yes, we try to make ourselves aware of the rules, but you cannot do everything when you are just a volunteer.

We do not sit there all day going through the rules and criteria. We do not have that knowledge; we have to go back every time and go through all of those documents. David showed only a very small amount. I have a folder which is about that thick. It is impossible to upskill yourself entirely.

MR PARTON: Swimming against the tide all the time.

Dr Dobes: All the time, yes. We are not complaining; sometimes you have to swim against the tide. But it would be really good if you could make it much simpler.

Dr Denham: One quick point about your question, which is a very good one, what happens in the community is that the average person who has a house that is going to be built next door to, they encounter this sort of situation only once or twice in their lifetime so they do not understand what is going on until this great wall is built going up 10 metres that will block the sun. So then they come to us. As Leo said, we have a basic understanding of it, but even that is pretty complex.

You have to get through to the people that this is a fair system, and right now they are confused and they think they are not being treated properly. Particularly the one just shown in Narrabundah, that is terrible.

MS ORR: Just so that we are all on the same page, I want to get an understanding from each of you as to what you see the development application system to be, what the process is, because it is quite a complex system. So if I asked you to explain the development application process to me, what would you say?

Ms Gingell: From our perspective or from the perspective of a project proponent?

MS ORR: From your perspective.

Ms Gingell: From our perspective, we look for notifications on the website. We look for signs going up around the suburb. We listen to word-of-mouth information about things that might be happening in the neighbourhood. We check as best we can the plans and the statement against rules and criteria, and then we draft our submissions and we wait.

When the notice comes out, if the decision is in favour of the proponent we then have to sit down and consider other issues. Because zone objectives are taken into account in the assessment process but cannot be used in the appeal process, we have to go through very carefully to find what rules may have been broken. They are usually not; it is usually around the criteria that we have spoken of. But it is very subjective.

We then have to make a decision. We do not have much money and it costs us money to go to the tribunal. So we basically have to weigh up whether we think we have a chance of getting a better outcome through lodging an appeal.

Mr Moore: I noted a couple of submissions that contained recommendations. If the

committee had a look at those submissions and the recommendations you would get a pretty comprehensive view of what the community is looking for out of this.

I have really high hopes that this committee will be able to make some recommendations which will help to restore confidence and trust in the DA process. As far as the community is concerned, there is very little trust in the DA process at present. We believe it has very much been gamed to the disadvantage of the community and even the traders. I think that that disadvantage needs to be addressed.

Ms Gingell: Something that seems to be happening only recently is that rather than just rejecting a development proposal, it will be approved with a whole list of conditions which rely on further documentation or amendments to plans being lodged. The problem is that the developer is given something like 20-odd days to lodge that material.

Similarly, we are in a position where we have to make a decision whether to appeal or not. We do not have access immediately to all the changes the developer has been required to make so we cannot see the impact of that. And the time period for both of us is similar. So by the time the developer puts in those amendments the appeal time period to lodge an application will have passed.

MR PARTON: I am hearing this a lot. Ruth, your story just blew my mind. It was exceptionally well documented in terms of changes that were made and then things that were added to the DA on the very last day. I want to ask a broader question not specifically about your example: are we talking about innocent neglect or are we talking about orchestrated deception which is within the rules? Do you think there is an attempt to withhold information at every quarter because they have been able to get away with it and so, "Let's do it"?

Ms Cully: As I said, I cannot read the mind and heart of an applicant. I can see their outputs. I can see their documentation and I can see when that documentation changes. Clearly the system has perverse incentives. A person can put forward inaccurate or incomplete information and exploit loopholes which may be borderline.

Our organisation is not a paid professional organisation; we are the residents of Hughes. We do not have the funding and the resources to operate as a kind of organised scrutineer of every development application that gets put up.

There is a wide belief in the community that the government has protections for things like solar access, the amenity of urban gardens and the quality of life that we enjoy, and we see that in the objectives. In the objectives of the plan those sentiments are there, but it is not translated down into an accountable, transparent system for ensuring that those objectives are met.

Dr Dobes: Can I give you a specific example: 17 Lindsay Street, Narrabundah. This is a very good example—and we have several of these—where a developer can totally flummox the community. They put forward a DA which was exempt, and they then amended it. Nobody saw the amendment; you have to know about the amendment occurring to even FOI the information. They then extended the basement to the whole block. That totally breaches the criteria for DA exempt developments where you

should have no environmental impact, because you cannot plant deep rooted trees, this is part of the process.

The community does not find about it. The developer knows that they can put forward an acceptable DA and then amend it later and the community will never find out about it, nor can they appeal it. Developers know the rules; they know how to game the system. We can give you other examples, too. If you are ever interested, we can go through a whole lot of cases, and I am sure the other community groups can as well.

MS ORR: I got a good understanding from Christine about the process, so it seems there is an understanding of what the process is. Would anyone like to add anything to it?

Dr Fogerty: Yes. The outstanding feature of the process is that it is opaque. You find out about a DA from your neighbours or from friends or from journalists, in the case of some recent important DAs. You look on the website. You try to understand the documents. You try to navigate your way around 30 different documents looking for the information you want. You try to understand what decision is being made and why. You try to work out what the process is, and you get confusing answers.

It is opaque, and a lot of things could be done to improve that. But the first thing that would really help the community organisations and residents is for some sort of standard thing at the front of development applications that sets out things like the building footprint, the solar access, loss of trees, plans. We put a recommendation in our submission. Something up the front that makes clear what these people are wanting to do and what it will look like.

That should be fairly simple but, no, we have to wade through 30 documents trying to work it out and trying to understand technical language. We have done this for a few years, decades in the case of some of us, and it is still hard for us. Imagine your average person who suddenly finds bulldozers from the knock down and rebuild at the back of their house that they were not notified about. How were they supposed to navigate this?

Ms Cully: On the issue of post-approval modifications, in my case it appeared that the minister himself was unaware of the changes the applicant had made. So we had a situation where the directorate required the development applicant to remove parapets that were blocking solar access. This is what the minister said in correspondence. However, the applicant then negotiated to retain the parapets. So if the minister himself did not know about the changes, what hope did members of the community have?

Mr Moore: Could I give an example of this business of opacity. For a recent DA we requested the plans, and the plans for this DA were quite critical because of the nature of the DA. We could not read the plans when we got the download and we thought that was pretty bad. We complained to planning and they said, "Come into the office and have a look at the plans we have in the office."

So we went into the office to look at the plans and we discovered that the plans in the office were unreadable too, a critical area of the plans. They had made their decision

without being able to read the plans themselves. We had to go to the consultants who drew up the plans to get a copy that was legible.

We could not read it, but what is most concerning is that the planning department were not able to read it either and yet they had made their decision.

MR PARTON: How was it not readable?

Mr Moore: It was too fine detail and it was an A3 plan. It was an A4 distribution and the plan was A3. It had been contracted down and became unreadable. So the government made a decision on a critical DA without being able to read the plan. We were astounded.

MS ORR: Picking up on the process, you made the comment that it is a system that most people would not necessarily interact with. It is also a professional and technical system. In the same way that I would not necessarily walk into a law firm and say that I could read law from day one, you would not expect someone who is not trained in the system to necessarily walk in and understand the planning system. I would like to get a sense from you of what role the community should have in the planning system and why. I think you have touched on it, but could you give us a clearer idea of how you feel that could be facilitated in the current process?

Dr Denham: We have given quite a few recommendations so far, and we have said that all DAs should be publicly available. As everybody is saying, it is completely opaque now, and it is DA exempt for knockdown rebuilds. There should be better consultation on bigger projects because the criteria there are quite limited. Those are steps that could be taken instantly. With the rules and criteria, the problem now is that the planning department are approving plans which do not comply with the rules.

Dr Dobes: I think your point is a very good one: how can the community do it? We cannot. We do not have the technical capacity. What we rely on is honest government, and part of that is certification, for example. So when a certifier says that something should be DA exempt and it does not have to go through a code process, we accept that because we are not conspiracy-type people.

There have been instances where certifiers have certified things which have been shown to be totally wrong. 48 Jansz Crescent in Griffith is one example. We can always give you examples. There is no sanction available for exercise by government against certifiers who falsely certify something. That is the area where the community is losing trust. If you can fix the enforcement side of things, that is where it is going to help a lot, so that we can rely on what we are told.

MS ORR: Dr Dobes, for the record, can you clarify for me where you see the certifier fitting in with the DA process?

Dr Dobes: The certifier can certify that something is DA exempt, as I understand it. It could be an architect, it could be someone who is a certifier, or whoever else. The person who is building something, as I understand the development act, can also consider themselves to be DA exempt. But the certifier is the one who ticks the boxes.

Unfortunately, ticking boxes does not always give you justification for what has been ticked. As I said, we have at least one good example of where the box was wrongly ticked. It was to do with underground parking in a basement. That totally falsified—I guess that is the right word—the plot ratio that was applicable. Yet that had got through. One of our committee members was able to spot the mistake within 10 seconds, and it had gone through the planning process and been approved. We do not understand why certifiers can get away with things that they are entitled to certify while the community has to face such an uphill struggle to be heard.

MS ORR: That is a question that we can put to the government.

Dr Fogerty: I understand that planning is a very technical matter. However, why do we have DA consultation processes and DAs online if the idea is that this is so complex that ordinary people cannot understand it? The whole purpose of this system is to make changes to plans and changes to buildings accessible to ordinary people so that they can look on the DA website and see straightaway, "Yes, that's fine. I'm fine with that; that's good." Or, "I have some concerns about my access to sunshine; I just need to clarify that."

It needs to be simple. This is a technical skill. Making complex information accessible to ordinary people is a very common technical skill across all areas, particularly in health, where many people's jobs involve making very complex matters accessible to ordinary consumers so that they can understand it. That is what we need here. We need a development application system that is not opaque, that welcomes interested input and that makes it easy and sympathetic for people to take an interest in their environment, in their suburb.

MS ORR: You mentioned that you would like to see how it has an impact on you. The best-case scenario in the context of this discussion is that it is an easily accessed system which clearly outlines what the development proposal is, so that any layperson can read it. What is the information that you would like to get out of that, and what is the input that the community would like to have through that process? We could give you a lot of very simple information but it does not mean that it is necessarily going to meet your expectations.

Dr Fogerty: Can I read out the ones that we would like? No doubt there are a lot of others. We would like prominent information on the proposed building footprint, solar envelopes, setbacks and proposed removal of trees and loss of native woodland or native grassland, with a plan which illustrates the changes compared to the existing layout, and notification of any other matters potentially reducing green space, solar access, tree cover, the natural environment and the amenity of neighbouring residents. It should be easy to express those things in simple, understandable language, I believe.

MS ORR: Does anyone want to add to that?

Dr Dobes: Solar access is a very good example. We enjoy doing trigonometry and various other calculations but it would really help, rather than just telling us what the angle is going to be or whatever other information we need, to be able to be told that it is going to encroach a certain number of metres into a neighbour's property, in terms of shadowing, at particular times of the year.

MS ORR: Would I be right in assuming that it is the information that helps you to assess whether the development will have an impact on you that you are not comfortable with? Is that essentially where we are getting to?

Ms Gingell: I think scrutiny of what is lodged is very important, and it is not happening until we pick things up or they get into the formal assessment process. Often things like driveway plans are missing. There can be other elements that are usually required to make a full assessment that are not there. With regard to certifiers, certifiers are paid by the project proponent, so it is in their interests to ease the passage of that development through the system.

MR PARTON: It is like turning up with your own umpire.

Ms Gingell: I also think there is very limited scope for officers. If you ring up and you can actually get through to the officer who is doing the assessment, there is very limited information that will be given during the assessment process. By the time we have figured out what it is all about, the assessment is underway.

At one stage, years ago, there was an idea put forward that there should be some kind of funded advocate for people like us who would have the expertise. I guess the money was not available. That could be a problem within the department itself. Perhaps they just do not have the resources to do the scrutiny or have the skills. It seems to be a big problem.

THE CHAIR: That was a Greens election idea in 2012.

MR MILLIGAN: I would like to discuss the pre-development application consultation and process. All of you are volunteers. Obviously, you do not have a lot of time to navigate through the meetings that are available to find out what is happening in your local areas. There have been a few suggestions put forward in your submissions on how you could improve that process. Could I ask you to elaborate on how you would extend that consultation process further? What methods would the developer have to use to get that out to the community for review? There were a couple of suggestions to extend the pre-consultation period as well.

Dr Denham: First of all, the guidelines for pre-consultation should be tightened. There are smaller projects than those in the guidelines that are important enough to warrant pre-consultation. An example is the one in Manuka recently, where the cinema and the whole section are going to be redeveloped. But a development application came in just for one small section of that. That, of course, did not fit in with the guidelines specified. We have suggested that those are tightened up, and they apply for smaller blocks than are currently in there.

There are good things. I refer, for example, to the consultation on the redevelopment of the Stuart Flats and Gowrie Court. I thought the government did a very good job on that. We did not always agree with the outcomes but—

MS ORR: When you say they did a good job, what things did you consider made that a good process?

Dr Denham: They came to us. We had meetings; we sat down and were asked, "What do you want here?" There was a full, open discussion. For example, at Gowrie Court, the original plan was to have six storeys all the way around. We thought, "That's not really very good because it's miles away from local shops. Wouldn't it be better to have townhouses and things there?" Most of it now is townhouses, and there are just two of the six-storey things. Things were changed. You felt that you were part of the process because the outcomes were changing as a result of the community consultation.

MR MILLIGAN: Does anyone else want to elaborate on what they would expect to receive in the pre-consultation process? What type of information would they want?

Dr Fogerty: Notification would be good.

MR MILLIGAN: To what degree?

Dr Fogerty: In our submission we suggest notification to anybody within a 200-metre radius or greater, depending on the size of the development, community organisations and other groups with a known interest in the area. With the notification of local residents and community organisations, it is wonderful when people come to you, as you say. It has not happened, I do not think, in our case.

Public consultations should happen. How can you have a major lease variation which involves a 41-fold increase in a building footprint on woodland, and there is no consultation, and you find out about it from a journalist? In what sense is that a minor and unimportant development like somebody putting a new window in their laundry? There is no consultation. There needs to be consultation, and it needs not to be show and tell. It needs not to be a bunch of slide printouts on a wall and you are all herded past them, so that you cannot talk to each other or make any comments, and you have no opportunity to tell the government what you think. In fact everybody did not say that it was a really wonderful idea. That is what happens now.

Ms Cully: I think the precondition for the effectiveness of a consultation process is the provision of accurate and complete information. This is what it comes back to. If there is misleading information at any stage, whether it is pre-consultation, in the DA itself or in modifications to the DA, it completely destroys the process.

Dr Dobes: The other thing is the catchment area. With the Brumbies, on Austin Street in Griffith, the club got in all of their supporters, many of whom were not living in the area, and they were able to tell the government that there was support for redevelopment. Of course, they sold the site and moved off. Consultation has to be with the local residents, not just with anyone else that you bring in, like with the thing involving the Giants from Western Sydney.

MS ORR: Dr Dobes, I appreciate your observation but I am curious to know whether you have a view on the future residents of the area because that is also something that has come across in the submissions quite a bit. Certainly, the existing residents are important, but particularly with these renewal projects there is a future population there. How would you balance the existing with the future?

Dr Dobes: I would like to know the answer to that too because you cannot look into the future and say who is coming. I think the best you can do is look at the people who are living there at the moment. If other people want to contribute, you can let them contribute but they should not have as much weight as the people who are living there at the moment, because they may never come. They can only be aspirational. You do not know if they will ever come.

Mr Moore: I have to say that I think the pre-consultation should be comprehensive. We are not just talking about talking to residents. In our case, we believe that the consultation has to extend to traders. It has to extend to people who have facilities in our area, like the historic railway. It has to extend to the heritage commission. It has to extend to the history people. For major projects in our area, I think that it has to be really extensive pre-consultation involving not just residents. We do not see ourselves, as residents, as being the sole people concerned by it.

Very often with proposals, we find that the most affected people—most affected and, in some cases, destroyed people—are traders in issues around the Kingston centre. This is one of the reasons we work with the traders. We see them as a partner in whatever is developed. Do not think it is just residents.

MS CHEYNE: My question is on those same things. I appreciate the comments about the pre-DA consultation process. I think it has been around for a bit less than a year now. It went out for consultation before those guidelines were locked in. Did your associations or groups have your say about whether you thought the guidelines for that process were adequate?

Dr Dobes: We certainly commented and we were asked to comment.

Ms Cully: I do not think I was actually aware of that.

Dr Fogerty: I do not think we were aware of that, sorry. Sometimes it is very difficult to find out what is going on. You have to actually go to the government's website and search around to look for things.

Ms Cully: I think were quite engaged at that point on the panel on the development of the federal golf course. I know we put a huge amount of work into that and I am sorry if we missed—

MS CHEYNE: Look, I am not expecting you to be involved in everything. It just seems that there is a shared appreciation that the pre-DA consultation process could be a good thing but it is missing the mark at the moment or in some cases, as the Friends of Hawker Village said, it is appearing to be a bit of a tick the box exercise. Are developers really feeding back what the community is actually saying? Do they say, "Yes, we had 20 people turn up; it was great; here is our DA"?

I think we have spoken with Mr Ponton in other hearings about whether that process would be reviewed and whether it was meeting its objectives. Is that something you would welcome an opportunity to feed back into, that perhaps it is a good thing but you have some suggestions for how it could be improved? Can we have some people

just say that for *Hansard*?

Ms Cully: Yes.

Dr Denham: We have in here reference to block amalgamations above 2,000 square metres, developments affecting a property listed on the ACT heritage register and all merit track applications.

MS ORR: That is expanding to cover those things; is that what you are saying?

Dr Denham: That is what we would say, yes.

Mr Moore: The gaming of merit track and impact track stuff is endemic. That needs to be looked at.

Dr Denham: Those are specific recommendations. Whether you guys think that is too tight or not, I do not know. But it certainly failed on this Manuka thing. We would have had a better outcome, and we would have a good outcome, if the whole thing was done as one, which is what it will be. You could look at things like pedestrian ways in Manuka and all those other things. You might even get a master plan out of it. Do not mention that.

MS CHEYNE: Just before we go to Mr Parton, who I know has been very patient, I want to refer to the website. Some of you have touched on the difficulties you are having when using it. Am I right that the names of files are a problem? In my own experience, sometimes there are 30 files but 20 of the files have the same name. You have to click on them to find out what you are actually going to look at. What other issues do you have apart from the time that they are available on line?

Dr Denham: Not all the DAs are on the DA file. They are not all on there and sometimes they are in the wrong place.

MS CHEYNE: On the website or on the app?

Dr Denham: On the app.

MS CHEYNE: Okay. Does each of your community groups use the app?

Dr Denham: I do.

MS CHEYNE: Or do you mostly use the website?

Mr Moore: We have had a lot of trouble with the app stuff not being on it. I think it is in it but it is still in its early days. We found a lot of DAs not on the app. I think we have registered that with the department.

Dr Denham: They should all be on the app—

Mr Moore: Yes, they should.

Dr Denham: On the DA app. The minor ones do not go on. The minor ones are the ones where you just consult with your immediate neighbours. These are the ones that cause all the problems because the neighbours cannot read plans. They do not know what is coming. They trust the government and then—

Ms Gingell: My understanding with minor developments and neighbours is that my neighbour knocked on the door and said she had been told to hand this one sheet of A4 to about half a dozen houses in the vicinity of her property. But it did not contain a lot of detail and it was not open for consultation or anything, unless that particular neighbour welcomed discussion about it. The requirement was to deliver that piece of paper to a list of properties.

Dr Denham: That is right.

MR PARTON: The vibe that I get from this panel discussion, to summarise it in a sentence, is that the panel is of the belief that the current system favours developers often, but not always, to the detriment of residents. Is that a fair assessment?

Ms Gingell: Yes.

Mr Moore: Yes.

Dr Denham: Absolutely.

MR PARTON: It is interesting. Obviously, we will be talking to a bunch of people on the other side who probably do not share that view. I want to bring to the panel a comment from the Planning Institute's submission to this inquiry. They said:

> … the Consultant workshop noted that community consultation is very resource intensive and therefore quite expensive for applicants. This has a flow-on effect in regards housing affordability etc.

They went on to say:

> … if some community members opposed a project, and the project wasn't abandoned in response to their comment, then it is alleged that the consultation was a 'sham'.

They went on to say:

> The workshop noted circumstances where the pre-DA consultation process can be 'distorted' by a couple of community members with strong views.

I wonder what the panel's views are on that comment. It sort of throws the cat amongst the pigeons here, doesn't it?

Dr Dobes: There is some truth in that obviously but it is like anything in politics where you might have someone with strong views. But they may actually represent a very large side of the majority. We cannot tell. You cannot give an objective answer to what you are asking. I think there are two sides and there is a bit of truth in both. I

would not be willing to answer where the rights and wrongs were on that.

Ms Gingell: I think those with a passion, which we have, for preserving our residential amenity in established suburbs will speak up strongly, because developers' interests are to make money. There is always going to be tension.

MR PARTON: I put a devil's advocate position: would you agree that if we were running every potential development past a committee of 300,000 people, in terms of the residents of Canberra, nothing would ever be built?

Mr Moore: Mark, could I give you an example of how a good developer is doing a fabulous job?

MR PARTON: Yes, please.

Mr Moore: It is the Molonglo Group out at Dairy Road.

MR PARTON: Yes, agreed.

Mr Moore: It is already participating with the whole of the Canberra community in the design and quality and ideas for that development. It is 10 years down the track. They are already holding discussions about the heritage, discussions about possible built forms and possible activities. They are encouraging the community to get in and be a partner with them. It is a fabulous exercise. So few developers actually have the foresight to do that. I can only commend that approach to other developers. If other developers had the same sort of attitude, there would not be any of this us and them stuff. There would be much more cooperation and much more confidence in the future of developments.

Dr Fogerty: I think what we would all like is for developers to work with us, for us all to be part of the community and to get the best outcomes for the community. I think sometimes it is a difficult situation. You mentioned one or two people in the community making a fuss. If sun is going to be blocked into your living room for most of the day, you are going to make a fuss. You are going to be the one person making a fuss. But the next person whose sun is blocked for most of the day, they are going to be making a fuss the next time.

I think when you have cases like that, it is the rules that have to change. The developer is developing under the rules or is taking the laws to the extreme. If you are consistently getting a few people making a fuss about something, maybe that something has to change.

Dr Denham: No-one has mentioned much about compliance, because that is Territory Plan stuff and not DA. But I think that if builders and developers complied with the rules, on the whole I think everybody would be comfortable with how things happen. It is when there is non-compliance. As that friend of yours said, you cannot comply if you make compliance happen only through fear, not love. What was his name?

Mr Moore: Rod Simms.

Dr Denham: That is right, yes. He said this and I thought, "Well, he is right."

Ms Gingell: I agree with the statement that compliance with the rules would be better, but the rules have to be right. As we mentioned, there can be a number of dwellings on a particular block. Yes, it complies; tick. There are a lot of measures that are in the rules that need further consideration for that to be an appropriate approach.

THE CHAIR: Ms Orr, can your question be answered in one minute?

MS ORR: No, probably not; so we should leave it.

THE CHAIR: Mr Parton, it is still your substantive. If you have something you can ask in a minute, go for it.

MR PARTON: I think we could sit here for the rest of day, but I think we have covered things. I do not want to drag us past 10.30.

Dr Denham: We appreciate it.

THE CHAIR: Thank you all very much for your contribution. It is really appreciated. We will send a transcript to you in a few days when is available. If you have any corrections, send them back to the committee secretary. We will have a brief intermission while we change witnesses.

Short suspension.

CIRSON, **MS ADINA**, Property Council of Australia
ROHDE, **MS ARABELLA**, Property Council of Australia
McPHERSON, **MR DEAN**, Property Council of Australia

THE CHAIR: We are quorate, so we will resume. I welcome the Property Council. I ask you to look at the pink privilege card and confirm that you are aware of its implications.

Ms Cirson: Thank you very much for allowing us to appear before the committee. I appreciate the early appearance today; thank you to the committee secretary for organising that.

The Property Council of Australia is represented right across every jurisdiction in Australia, and it has a national office as well. Here in the ACT we represent a diverse membership containing core members and associate members. Basically, with anyone who works in the professional services in the built environment, we have representation of those members.

The property sector in Canberra contributes about 57.5 per cent of all taxes and charges to government revenue to fund schools, hospitals and all those essential services, and it employs about one in seven Canberrans.

We at the Property Council, and our members, are very focused on ensuring that we have an outcomes focused planning system. We are engaged in every aspect of the planning system. At a time of renewal across the city, our members play a key role in what gets built and what will be the future homes, shopping centres and infrastructure that surround our public realm for many generations to come.

Our advocacy priorities include: encouraging urban renewal; advocating for planning and sustainable development policies which are outcomes focused; promoting transport oriented development, particularly around our transport corridors and into our town centres; providing housing choice for all Canberrans, including retirement living and affordable housing; and advocating for taxes and charges which are fair, which enable development and which do not act as a disincentive to development.

We are really pleased to be able to provide a submission to this inquiry. We think it is important at this time in the community that we really have an honest conversation around how we get the outcomes we need for this city, and how the community and those professions who are invested in working in the built environment can work more collaboratively and collectively together.

We are very supportive of the statement of planning intent that Minister Gentleman made a few years ago now; we think that it has the right intentions. We have been very engaged in the housing choices discussion and demonstration projects as well. We are very supportive of the design review panel and believe that that can deliver some great outcomes for the community.

We do think that there is a need to create greater certainty around planning approvals in the city and are conscious that the EPSDD is, we think, in urgent need of more

resources to ensure that engagement and approvals processes happen efficiently and create certainty for all those involved.

We think that there is a role for government to play a leadership role in educating the community around the planning framework, the Territory Plan, and how we all engage in those approval processes. We have great confidence in the ability of the planning officials to make good decisions for our community and for our members, but time is money, and delays to planning approvals processes ultimately result in poor outcomes and worse quality.

We would like to draw attention to the fact that we think that there is a need to have a look at the third-party appeal system in the city. We are finding that our members are having to have contingencies of anywhere from 200,000 to 300,000. One member told me last week that they have a contingency of $5 million to safeguard against third-party appeals. We think that there is time to have a look at that system and see how we may get some better outcomes from that.

I will finish there. I want to introduce you to Dean McPherson, who is appearing on behalf of architects later on but is here as a Property Council member and works at AMC Architecture, and Arabella Rohde, who is Senior Development Manager at the University of Canberra and is also head of our planning committee and sits on our division council.

THE CHAIR: You are a national organisation. I was wondering if you have any views on how our planning system—not the whole planning system but this part of the planning system—compares with other jurisdictions. You have talked about delays, for instance, and, implicitly, costs. How do we compare?

Ms Cirson: Nationally, the Property Council earlier this year released a report card on the planning systems across the city. Canberra came in second behind Queensland in terms of its efficiency. I am happy to provide a copy of that report to the committee; I think it is quite a good report.

We are sometimes seen as a very complex jurisdiction to work in because of our leasehold system but, in actual fact, having only one level of approval—and of course the NCA overlaying that—can create great efficiencies and has the potential to create streamlining in the approvals processes once there is greater education. Arabella, do you have anything to add?

Ms Rohde: A lot of the assessment is done off the development assessment framework, DAF. That provides a number of guidelines and principles for our development code and development assessment processes. The ACT rates quite highly because it has the mechanisms in place to allow for code track assessments and merit track assessments rather than through what often happens, at a local council level, local government level, and then state government level, which can add to that complexity.

The issue is that even though we have the framework, it is not being utilised to its full potential. For example, there are not as many DAs, development assessments, actually in code track; the majority of them are in merit track. There is a lot more potential to

have more development applications within the code track system provided they comply with a series of guidelines or codes that are in place. The framework is there, but whether it is being used to its full potential is something that could be explored further.

THE CHAIR: That would be the major improvement that you would make: to move more things into code?

Ms Rohde: I think that comes down to the clarity of where there is an opportunity within the Territory Plan and the development assessment framework within the ACT at present. It definitely has the structure in place to allow that. There could be a greater emphasis on actually providing those developments that comply and then putting those developments which might want to see some merit track assessment around some of the criteria rather than necessarily the rules.

The way that the Territory Plan is set up where it establishes rules and criteria is a bit misleading. I think it is understood that the rules are deemed to satisfy most parts or those minimum compliance requirements. But if a criterion is in place, it does not mean that it is any less good or it is a noncompliance.

If you were to look at what an improvement could be, it could be that there would be more development applications in code track that seem to comply with a set of minimum criteria deemed to satisfy provisions, and then you could merit track their use for those where there might seem to be a criterion assessment or a merit assessment against that criterion, which is more in line with, I believe, what the intent of the framework was in the first instance.

THE CHAIR: You talked about delays. Why do you think we have delays? Is it basically lack of funding for ACTPLA to do its work? If so, is that a reasonable thing to put more money into?

Ms Cirson: We have been hearing from our membership around delays for probably at least the past 12 months. There are a few things. Obviously, there is a lot of development going on at the moment at a time of renewal. Some of the projects that are going in are quite complex. One of the anecdotal pieces of feedback is that sometimes the bigger projects take up a lot of resources. Let me go to smaller projects: townhouse developments, for example. We had 14 townhouses. One of our members took 12 months to get approved for that. So there are quite lengthy delays for simpler projects because the staffing resources and expertise needed on those big, complex residential commercial developments really cause delays.

We have been advocating for more resources in planning, but also around ensuring that those planning officials are experienced and have the skills required at a time of renewal. Ultimately, that comes down to resourcing.

THE CHAIR: Would your members be okay—obviously there is a fee for DAs—if the DA fee were increased to give more staffing?

Ms Rohde: I think, in short, yes, if there were greater certainty around that development assessment time frame. Part of the issue is around certainty, not just

necessarily around time frames. Under the act, there is currently a provision for the statutory time frame for those development assessments to be met, and a good portion of them are not being achieved within that time frame. But with the uncertainty of not knowing when it is going to be resolved or where it gets through the different elements from the completeness check through to even just notification, it can be quite difficult.

We have often seen people from interstate, where they have come from not as cohesive a planning system with their local statutory authorities, take the view "Should we appeal it?" Technically they could put it into ACAT as a project that has been refused.

Ms Cirson: That is a good point. That is feedback that we get: there is that fear that things are going to be appealed and that the planning officers, approval officers, get stuck on very minute details and send them back and restart the clock, which then causes further delays. Did you have any more?

Mr McPherson: Yes; they are preparing their case for ACAT, essentially. In terms of the delays right through the process, we are talking about tech check delays, the process itself, and, where additional information is requested, restarting the clock occasionally: authorities often, as the excuse for an extended delay, and then, obviously, EPSDD preparing a case for ACAT and requesting more information within the DA because they know it is going to be appealed.

I think the delays extend outside the statutory period with the tech check process. We are seeing tech checks at five and six weeks for very simple rule-based and criteria-compliant developments and seeing delays in the order of 12 months for larger developments when really it is a compliant DA and it should pass through in the statutory time frame.

We have case studies and examples of those if necessary. It is not relevant to talk to them today, but there are numerous examples, as Adina referred to, of simple, compliant DAs that extend well past the statutory period.

MR MILLIGAN: In relation to these delays, in your submission you mentioned that a lot of your clients hold back on a lot of innovation in design in their projects because there is a risk that there could be an appeal that will go ahead and in effect cost them more money because it is designing out and thinking outside the square, outside the boxes you have put here. How relevant is this? How many of your clients does this apply to? How many of your clients are held back on real innovation and excellence in design due to this appeals process?

Ms Cirson: There is great desire to be innovative. That requires flexibility in the planning system. It also requires a level of trust with community. In terms of the approvals process and the impact that has, as I said, time is money. Sometimes what happens in developments is that a developer has great ambitions for a particular project, but because of time delays in approvals and community engagement, and then potentially third-party appeals delays, you get designs which are, to be frank, dumbed down at the end of the process, that perhaps were not as great a quality as they could be. And then designs are wound back a bit in order to make up that money somewhere,

to make up that time that has been lost. Arabella?

Ms Rohde: One of the other attributes—you hear it a lot now, and you hear it a lot from a lot of the built environment professionals in Canberra—is that one of the opportunities the ACT has is not to design by process but to think about the outcomes. When we have processes in place which are not driving the outcomes that proponents, designers, planners or developers are seeking to achieve because they want to try to avoid as much as possible where there could be a point of contention, that is a shame. One of the outcomes of that is that—often innovation is iterative; it is not always going to necessarily be the big bold steps and statements, and, understandably, it is not always going to be supported by everybody—we need to create that opportunity where we are actually putting through that ability to innovate and understand how that could work through without necessarily designing around process.

Mr McPherson: With the design-led outcomes process you are seeing in most of the submissions, having a look at the submissions coming through, people want to be able to innovate and talk about that early. Our current planning process, with the pre-application system, does not allow that. We have been advocating for some time to be able to go in very early with some sketches on paper—that is unusual; an architect is going to be saying this—and talk early about the options. We are passionate about the outcomes for these developments. In a pre-application process, it is very hard to do that, because customer services and so forth request that drawings come in. "We have some sketches on some paper we want to talk to you about. Can we talk about the idea?" Ben Ponton spoke about that brilliantly at the innovations—what is the title?

Ms Cirson: In one of his first events.

Mr McPherson: He spoke about that brilliantly in term of how we go about that. That has not flowed down to the pre-application process and that interface for customer services. As environmental professionals, we can find that avenue; we can talk to EPSDD and find a way to set up those meetings. I worry about the mums and dads and the others who cannot; they just face the brick wall of "Provide us with the plans and then we will have a look at it." It just has not quite filtered down.

MS ORR: We have just had a community panel in and they have had some contrasting views to some that we have heard in other submissions and so forth. One of the views that they have put forward is that there is not a lot of trust in the system and that the consultation that is undertaken, particularly by developers, is tokenistic, is not going to result in change. Do you have anything you want to say to those statements?

Ms Cirson: There is a very engaged community here in development and what is happening in people's streets and in the city more broadly. There is a level of trust and proof of concept that needs to happen. Sometimes risks need to be taken in order to prove those things. That is why the demonstration projects are particularly good, to relax the planning constraints that are not allowing for those more innovative developments. In our submission we refer to the fact that often our developers are going out to talk to the community about things that are already allowed, that are already permissible under the Territory Plan, and having to engage with the

community on heights that are already allowed. So there is a disconnect between what is allowed under the current planning framework and what is expected of our members to go out and advocate for or to educate on, when that is actually the role of the government. Our members' job is to go and talk to people about the type of development, not necessarily whether 26 storeys is allowed in a particular site.

Ms Rohde: There is variability in terms of the quality of consultation that is undertaken between different professionals and different organisations, so it is probably fair to say that not all consultation is equal. Picking up on Adina's point, what is often the case, though, is that it is often coming down to a policy debate as opposed to a debate where they are actually influencing the outcomes of the actual quality of the built form.

Mr McPherson: Right through the process, right through to ACAT, it is still a debate about the criteria as opposed to the outcome.

Ms Rohde: That is right, so it starts to become a bit of a concern. It is actually a shared responsibility between the government and the proponents undertaking the referral to understand where those policy debates need to be happening. And, as Adina said, a lot of it is permissible use. So often there is the provision for double-storey or townhouse developments that can often meet most rules but may require some criteria. Yet there is still a considerable debate around what is happening and whether that is actually allowable. And, as Dean said, it goes all the way through to ACAT. Where there is a determination that it is acceptable or that the change is rather marginal, it is not a functional change of the design itself.

The other aspect is the time when that decision is made. When somebody is purchasing a site, they are purchasing it based on the rules and criteria in the Territory Plan to do their initial assessment, and they will provide some contingency or allowance in terms of that decision-making basis. But there is too much inconsistency about what is in the rules and the criteria and then what has been referred to community consultation, and that is not documented anywhere. How is that investment or that decision made in the first instance when they are purchasing a site? If it gets to the stage where it is being made because certain groups or built environment professionals do not go into areas because of the lack of certainty on how that development or that change might be viewed, then we will get inconsistencies and we will get the loss of equality across Canberra as well, because there will be certain areas that will not be as well represented. At the end of the day it should be an equal playing field across all.

MS CHEYNE: Continuing on with appeals processes and how some assessments have disproportionate effects on DAs, I absolutely take your point on how frustrating that must be to some members who are, as we have noted, trying to do some innovative things. But how do we make sure that we are still giving residents, in particular, thinking about the third-party right to appeal, access to justice? They are the ones who have to live with whatever is there. Is there a way we could be balancing that in a way that we are currently just not doing?

Mr McPherson: In the consultation process, as Arabella alluded to, there is a great range in the quality and style and the approach. If you take the requirements around

public consultation, the approach to that varies significantly. The community group previous to this talk was asked a question around the ability for one or two people to have an outspoken voice in consultation. I see that regularly in consultation. Young people come up and pull me by the cuff afterwards and say, "I didn't quite agree with that; can I give you my opinion?" But they are not prepared to speak up in that process. So allowing an avenue for others to speak in a non-community environment is important. Some of the more successful consultation processes that I have been involved with have been me knocking on the door of residences and just having a chat before we have put pen to paper. That has yielded some fantastic results, some letters of support, because they really think it is going in the right direction, as opposed to objections.

So I think the inequity in that process is an issue. And that is right through the system. Look at the appeals in ACAT. There is the ability for a vexatious claim to go all the way through and cost a community group or a client a lot of money—all the way to the Supreme Court in some cases and then have only costs awarded in that situation is inequitable. To lodge an appeal for $248 and take that all the way through a process and cost clients a million or a million and a half dollars—and I can give examples of community groups that have had those costs—is inequitable. It goes both ways.

Ms Cirson: There is an education component about what is appealable. Instead of having a conversation about the approval, you are having a policy discussion all the time about the types of development that people want or do not want in a particular neighbourhood.

Ms Rohde: There have been a couple of good examples. A number of developments have been recognised for the good community consultation they have undertaken in terms of community forums, doorknocking and getting the community involved in design, and then there is one person who does not like it or still does not want it to go ahead and they put an appeal in, irrespective of the good community consultation that has been undertaken, and engagement with the community. The community are often divided around some development. It only takes one to go into that process. That is picking up on Dean's point as to the ability to have an early review or early decision around whether it has a likelihood of succeeding or putting it in process. If we look at the complexity around the DA and the DA fees, I think that is valid. But it is also valid for ACAT, because that is a far greater and more complex situation. If the fee is $248, then that does not really represent what is involved and the number of people, and I would imagine for the government as well.

Ms Cirson: Our members have been having conversations in recent weeks around what the solution is in third-party appeals. It is about education about what is appealable. It is also perhaps about increasing the fees. Other jurisdictions have much higher thresholds to lodge an appeal. Perhaps it is about having an out-of-the-box think about how you create certainty around approvals up front. Then if a project were to go through a design review process which created greater certainty or trust in the community that it had been looked at in that context, that project might be exempt from an appeal. So I think there are some good things and probably a different conversation, but it is timely to be having the discussion around third-party appeals and how we might create that certainty.

Ms Rohde: Also, looking at other jurisdictions, what is often missing is the decision-maker talking to both sides and explaining their reasons for the decision. I think that is missing somewhat in this process and sometimes leads to either an applicant or the community not feeling satisfied that their concerns were actually heard, whereas they likely were heard but are not in the considerations that were put forward in the four or five-page document that supports a DA or the reasons for decision. It might help to have a design review panel or some sort of information panel, particularly if it is a more complex project where the decision is probably more final, unless there has been an error of law, that gives the community the ability to be heard or to talk and for both sides to present their responses in that forum. There could be an advantage in that.

MS CHEYNE: Something we have heard from community groups before is that they get the decision and then they read the justification for the decision but they do not understand it, the way it is explained to them. They still feel that their views were not heard, because of how the rules were applied.

Ms Cirson: Perhaps there could be more mediation up front. Dean, do you think that there is an adequate amount of that before you go into full appeals mode?

Mr McPherson: Mediation can be really successful or fall on its head, depending on the applicant or the process. I think mediation should be encouraged more greatly. We move past mediation very quickly. I think the ability to have a discussion is much easier at mediation around the quality outcome than it is in ACAT when you are talking about the criteria or a particular rule. You are talking about proportions of the private open space instead of saying, "What are we actually trying to achieve here? What is wrong with a private open space that is 20 metres long by 4 metres long instead of 6 by 6? It is a better outcome for the community because they can use that space." That design outcomes discussion happens better in mediation, so if we can encourage that process to stay longer—yes.

MR PARTON: There has been lot of discussion in this half hour about uncertainty in the whole process. In your opening statement you talked about the fact that time is money. I know you are not going to have the absolute numbers for me but I would love to know how many projects are delayed, for all of the reasons that we have spoken about in here, where those delays end up eating up the entire profit margin so that although the project is completed, it is completed at square or in the red.

Ms Cirson: There are lots of examples. On one that is already on the record, Rowan Hindmarsh appeared before this committee earlier this year and spoke about the Woden Territory Plan variations, the master planning process and the lengthy delays that have gone on through the planning process in Woden. He is prepared to be patient but he named holding costs of $1 million a year to sit on that land and go nowhere. They still have not proceeded; they still have not commenced.

MR PARTON: There is a perception that there is an endless pool of money and that you can just keep on pumping it in there and—

Mr McPherson: Not everyone has a million-dollar contingency on a project. And those contingencies, or those costs, translate in different ways for the community.

With a lower yield on an aged care development where you are providing beds in demand for the facility, the client just adjusts that development down a storey or something to reduce the number of beds. That is not a good outcome. It flows through.

MR PARTON: The question—and no-one will know the answer to this—is how many developments are not even put on the table because of the uncertainty, because when they assess the potential for the development to be taken off track by ACAT and by all sorts of other things, the call is made that they are just not going to do it.

Ms Cirson: In your feasibility, if you are aware that you are doing something a little different that might end up in ACAT—and I mentioned a member who has a $5 million contingency just to go to ACAT—

MR PARTON: That is a lot.

Ms Cirson: That is a lot of money. It is a big project. But what is actually worse is that those developments proceed but they are not pushing the boundaries, they are not being innovative and they are not delivering flexibility. As Dean has referred to, it might result in fewer aged care beds or fewer affordable apartments being built, because the feasibility starts to unravel through the process.

Mr McPherson: It is a common outcome, being an architect and seeing those design processes of dumbing it down or lowering the yield, right through to government departments delivering social housing. Do we take the risk on board, going full yield, or do we lower it a bit for the community? There is definitely the risk analysis done early around "Is it going to go to ACAT? Are we going to take that risk?"

THE CHAIR: Thank you very much for your time. You will be sent a copy of the transcript as soon as it is available. If you have any corrections, please send them to our secretary.

Ms Cirson: Thank you for having us.

HOPKINS, MR MICHAEL, CEO, Master Builders Association

THE CHAIR: I welcome the Master Builders Association. Mr Hopkins, can I verify that you have read the pink privilege statement?

Mr Hopkins: Yes, that is fine.

THE CHAIR: Do you have an opening statement?

Mr Hopkins: Yes, and I will try to be brief. Thank you for inviting us to the committee this morning. This is a really important issue for the government and the committee to look into, and it is coming at a particularly important time. As we all know, Canberra is booming at the moment; just ask any one of our members how busy they are. In fact, it may have been timely to have done this inquiry a year or two earlier to get ahead of that growth, but we are really pleased that you are looking into this issue, because it is such an important one.

We encourage the committee to take quite a broad and holistic view of the DA process when you are looking into this issue, not only of the consultation involved in the statutory DA process but, in fact, the whole process that leads up to a DA being lodged: the creation or the review of the Territory Plan, the city-wide strategic planning and the master planning. All of that is an important consideration as well as the actual DA itself.

It is clear from our reading of a number of the submissions that have been made that there is currently a low level of satisfaction with the DA process amongst a number of stakeholders. I would certainly include industry as being equally as frustrated with the process at the moment.

I wonder whether some of that has to do with some external factors and not only the actual DA process itself. The building and design quality reforms that are underway, the impact of development charges, fees and taxes, the level of resources, skills and experience that sit in the government's DA assessment team and also the community's understanding of all of these rules are all important issues that need to be considered as well.

The rules controlling DA consultation are complex. I was hoping that we could keep our discussions at a principle level today. I hope you do not have too many nitty-gritty questions about clause this or clause that. But at the principle level, firstly, it is important to understand the economic impacts of what we are talking about.

The level of certainty and the cost created by the DA process, the impact of delays, compliance costs and consultation obligations all have a significant impact on the economic viability of projects. If you think about all that cumulatively, it has a significant impact on the attractiveness of Canberra as a place to invest.

Many jurisdictions have recognised the link between the DA process and economic investment. Some have responded by creating special planning zones, modified third-party appeal rights, reduced infrastructure charges or development fees, a whole

range of things to encourage economic activity. Conversely, if the ACT were to ignore these factors, our economic competitiveness would be reduced.

Secondly, information about planning policies and development applications should to the greatest extent possible be transparent and easy to access. Information about the Territory Plan, master plans and DA should be easy and free to access. Transparency should be used to foster a greater understanding by the community of the type of development being proposed in their suburbs, and we think transparency will ultimately lead to greater trust between community developers and the planning authority.

From a review of the submissions received by the committee, providing greater transparency in the DA process seems to be supported by a number of stakeholders, and we would certainly support these improvements, especially using technology to facilitate greater access to information.

It is important to understand that greater access to information does not have to mean increased obligations to consult, nor does it have to mean additional legal rights of appeals being created. In simple terms, informing the community or consulting with the community are two different things.

Thirdly, consultation with stakeholders should occur as early as possible in the planning process. This is a key point we have made in our submission. Early engagement with stakeholders—especially on key issues like land use, building height, plot ratio—are important, but if decisions on these issues are delayed until after an investor has already acquired the land, invested in detailed designs, carried land holding costs and been charged development fees, there is a significant cost in changing their designs in response to feedback if it is received quite late in the process. We believe the planning rules should require that consultation as early as possible in the process.

The final point we make is around the use of third-party appeal rights. We encourage the committee to investigate in detail the use of third-party appeal rights and their effectiveness in the DA process. In the ACT, third-party appeal rights are allowed in a broad range of circumstances, and there is a very low barrier to commencing a third-party appeal. I think it costs approximately $200 or thereabouts to lodge an appeal in ACAT.

This has the potential to significantly delay development proposals which comply with the planning rules. It can be open to abuse by vexatious stakeholders who are sometimes commercial competitors, or it can simply be used to delay a development proposal by the objector in the hope that a 12-month delay will lead to the proposal being unviable, and often that is successful. If consultation is carried out early in the planning process and DAs are approved in accordance with the resulting planning rules, we do not believe third-party appeal rights should apply.

Likewise, if the planning authority uses its discretion to approve a development with an alternative or an innovative solution, third-party appeal rights should not apply; the judgment of the planning authority should be supported. Third-party appeal rights should be limited to being used only where there is a development proposal that is

significantly different from the Territory Plan or the master plan or where the planning authority has failed to properly assess the impacts of the proposal.

Thank you for considering these issues and happy to take questions.

THE CHAIR: You said that you would favour fewer appeals and only where the planning authority had effectively got it wrong. Many members of the community would say that in all the instances where an appeal has gone as far as ACAT there have been numerous examples of the planning authority not correctly evaluating the DA against the rules. Certainly in some instances ACAT has agreed with the community that ACTPLA has not correctly evaluated. What can we do, given that situation?

Mr Hopkins: There are a lot of issues to unpack in this point. A small but important point I made in my statement is the planning authority has to be well resourced, experienced and skilled in what they do. At the moment where we are seeing a large amount of development activity, I would say the sheer resources in the planning department have not kept up with it. Government would do well to provide more resources in the development assessment area so they could keep up with that and properly administer the planning rules.

The second point is often, even at ACAT stage, that a disagreement between whether the planning authority has assessed an application properly often comes down to a judgement between whether the planning and rules have been met or the criteria have been met. I think in the community's mind there is a hierarchy amongst those and that the rules are more important than the criteria. That is not how we understand the Territory Plan is established.

Probably more importantly, if that is the way it is to be interpreted, it will encourage this stock standard approach to development. It will mean we get lots of proposals which comply with planning rules. No-one will be game to try an alternative solution or an innovative solution if there is a risk that the planning authority's decision may be subject to a third-party appeal.

The key point is the independent planning authority judgement needs to be supported, it needs to be backed. They are trained professionals after all and they hear submissions from the community and from applicants alike. Their judgement should be trusted and supported. If it is open to third-party appeals or challenge almost every time, eventually, their enthusiasm for approving innovating solutions will deteriorate over time. That is probably what we are seeing.

THE CHAIR: You said there should be more resourcing for EPSDD. Do you think the development community would be happy to pay for that via development application fees? That would be the only way I could imagine it could happen.

Mr Hopkins: If you told developers with an application in the system at the moment that for a slightly higher fee they would get their development approval faster, there would be a line out of EPSDD around the corner of people wanting to pay that fee. But the bigger question is whether they should.

Keep in mind that not all developers lodging applications are large corporations; many of them are mums and dads using their superannuation funds, maybe an individual building a secondary dwelling or trying to build a dual occupancy. They do not necessarily have the capacity to pay, and nor do I think our system should be set up so that those with the largest capacity to pay get the most favourable treatment.

If there is a problem with DA delays, we need to turn our minds to solutions where everyone has a timely approval and not just those who are willing to pay more for it.

THE CHAIR: There have been suggestions that maybe we could do more with mediation or something along those lines rather than going to ACAT, which is usually not a winner for anybody. Do you think something less formal is a possibility?

Mr Hopkins: Yes, absolutely. I think we could look at a step in the process after the decision is made and before an ACAT appeal where there could be mediation. Provided there were some certainty in that process for the developer, that it was not just going to open up every aspect of the proposal for reconsideration and that there was some sort of timeline as to when it would happen so it could not be used as a delaying tactic by vexatious appellants, there would be merit in looking at mediation as a solution.

MS ORR: Quite a few of the community panel submitters indicated that they would like to be able to get more access to and have early interaction with the development system. I want to get your view on some of their proposals, such as a plain English summary explainer as part of the development application for the development that is going forward. Another was interacting with community groups earlier in the process, as the development was being shaped.

Mr Hopkins: With the plain English statement, I think there have already been some attempts to do that. There is possibly some merit in looking at that further. The difficulty is that a development application is often hundreds of pages long, with complex plans. Trying to put that into a one-page summary could be difficult. There could be arguments about what is included in that summary and what is not included.

In terms of when that consultation is undertaken, and whether it could be made earlier, I think that is a key point. But I would not move it to earlier in the development process; I would move it to earlier in the whole planning process. The planning strategy refresh that is being undertaken at the moment is the key time frame for government to be consulting around land use, zoning, building heights and density. All of these issues are often brought up in a submission on an individual development application.

These issues should be resolved early in the process. Once the planning rules are set, an applicant should then be able to rely on those rules, lodge an application and have the expectation of it being approved if they comply with the Territory Plan. That is why our comment on third-party appeal rights suggests that it is only when a proposal is significantly different from the Territory Plan that the third-party appeal rights should apply. Clearly, that is different from the whole planning process that has led up to that application.

MS ORR: With that in mind, in a perfect world, if everyone were consulting up-front and the rules were set in place through the planning strategy, what consultation would you see there being with the community for individual DAs?

Mr Hopkins: When I talk about early consultation, I am really talking about government-led consultation before the DA is lodged: at the Territory Plan, master plan, precinct code type stage. I think that that consultation role is one for government, not for developers.

When we get to the development application stage, there is obviously already pre-DA consultation which is required, and there is the statutory consultation that happens through the DA. The difficulty with those is that often we are consulting on rules which are already established in the Territory Plan. We are talking about an issue of building height, setback or plot ratio, where the Territory Plan already sets that rule. I think it is really unfair that we are often re-prosecuting or rediscussing those issues when they have been discussed in the whole lead-up to that process by the developers, the community and the government.

MS ORR: Would I be right in assuming that you feel that the current settings for community consultation on DAs are sufficient or would you like to see those change?

Mr Hopkins: I think they should be changed. The development community's frustration about how they are working is probably equal to that of the community—maybe just for different reasons.

MS ORR: How would you like to see them changed? What would you like to see changed about the DA part of the process? I note that it is part of a broader process, but what about the DA part? When you say you would like to see those processes change, what changes would you like to make?

Mr Hopkins: We have spoken particularly about third-party appeal rights. I think that is a key area. We can talk about what happens through the DA process, but a far more important area, I think, is third-party appeal rights. I think they should be lessened from what they currently are, and directed only towards those applications which are significantly different from the Territory Plan, not where an application is generally in line with it.

MS ORR: Leaving aside appeals, what about the other sorts of things that we have heard about? You have already spoken about the plain English summary. You said it could be hard to put a complex document into a short summary.

Mr Hopkins: Yes.

MS ORR: Other things we have heard about are longer notification periods, greater canvassing of notification—letterboxing broader groupings than we currently do. Those are the sorts of things we are hearing about. What is the view of the MBA on those suggestions?

Mr Hopkins: We supported the pre-DA consultation guidelines that were introduced by government recently, which addressed a lot of those issues. Our point was that

some developers were doing those voluntarily, and that it was good to have a guideline so that everyone was brought up to that same minimum standard. We probably need to give those guidelines a chance to be implemented and see how they run.

I also made the point in my opening statement about the difference between being informed and being consulted. Leaving aside third-party appeal rights, where consultation leads to some third-party or legal appeal, there are some difficulties in expanding that. We would certainly encourage greater information to the broader community about development proposals.

Some community councils have commented about more applications being made available on the DA finder app. We would definitely support that. There is a whole range of other technology which can make information about what is going on in your local community readily available. Our point is that just having access to that information does not necessarily have to carry a legal implication down the track.

MR PARTON: I want to go to a different point. We heard from the Property Council earlier in terms of the report they put out regarding planning processes across the different states and territories. The Property Council report certainly was quite favourable for us. Looking at the ACT, I think that only Queensland came in ahead of us.

I would like your viewpoint on that, particularly as you have specific Queensland experience formerly. I am sure that a lot of your members end up doing work in both New South Wales and the ACT. I am looking for your view on how the DA system works here in comparison to those other jurisdictions.

Mr Hopkins: If you look at other jurisdictions, you might hear the phrase "front-ending a consultation". That has certainly been the experience in Queensland and in other areas. That is essentially the point we are trying to make about bringing the consultation earlier, front-ending it, if you like.

The big issues, such as land use, height, density and all of those sorts of things, should be dealt with early in the process. Once they are decided, lock them away; then they do not need to be re-prosecuted in a development application. It is only where the development is significantly different from those rules that you would expand that. Certainly, one trend that we could pick up from other jurisdictions is, if you like, front-ending the consultation. As I said that consultation is actually essentially led by government rather than the developers.

MR PARTON: This is interesting; you are essentially agreeing with the last point that the community groups made. The last point that they made was, "We just want developers to follow the rules; and if they do follow the rules, we think everything would be fine." Is that not what you feel in real life from community groups? What I am hearing is that often things are challenged that are very clearly permissible developments.

Mr Hopkins: That is right. The point we were making earlier was that sometimes there is some misunderstanding about what complying with the rules is. Because we

have rules and criteria, there is often a misinterpretation that complying with the rules is what is expected, and an alternative solution is somehow a lesser standard which has broken the rules, if you like. That is not how the system is set up. The point I made before is that, if that is how our system was set up, it will lead to a situation where all we do is comply with the rules and there will be no innovation in the types of developments coming forward.

I think that is a point of misunderstanding about how the territory plan is drafted, though, this issue of rules and criteria. We would certainly say that not complying with the rules and putting forward an alternative solution, and going down the criteria path, is equally as compliant with the Territory Plan.

MR PARTON: A number of panel members from the community groups, and a lot of submissions that we have had, suggest that, for many DAs, large and small, often information is not provided, is not present and is not accessible. There is a perception that developers are trying to withhold information from nearby residents in the belief that if they do not know exactly what is going on, they cannot really appeal it. How would you respond, representing the MBA?

Mr Hopkins: We would encourage greater access to information, including early in the DA process. If that information is not being provided, or if it is being provided to the planning authority but not being provided to the community, we would encourage it to be provided.

MR PARTON: Do you believe that that is going on? Do you believe that there are those who are withholding information to avoid scrutiny?

Mr Hopkins: Not in most cases, but I am sure there are some cases. When we spoke before about the pre-DA guidelines, before those guidelines some applicants were doing a very good job of providing a lot of information early in the process, but not all were.

The point of the guidelines is to try to bring everyone up to that same standard. If we give those guidelines the chance to be implemented, hopefully that will improve. If there is information that is not being provided, particularly if it has already been provided to the planning authority, we would encourage greater access to that.

MS CHEYNE: Do you give any training guidance to your members about what it would be useful for them to do in engaging with the community, particularly if they do have a big project? I very much appreciate that you think the pre-DA consultation guidelines are a good thing, and I think there is general acceptance of that, but there are differing views about whether they are working in the way that is intended or not.

I know that more time might be a helpful thing, but I have heard personally, and we heard from some of the panel members this morning, that some developers are doing it incredibly well and some are still using it as a bit of a tick the box exercise. Does the MBA have, or could it have, a role in saying to its members, "This is an example of where you might get a good outcome, and this is an example where the community still felt a bit—

Mr Hopkins: No, we do not at the moment. It is interesting that you point out the role of industry associations and the impact we could have. That is certainly something that we would be prepared to look at. Probably the practical reason as to why we do not at the moment is because often that training or education role is filled by the consultants who are advising the developer by that point. They would generally have a team of planning consultants. Sometimes consultation consultants are providing that sort of advice.

MS CHEYNE: Again some of those would be better than others.

Mr Hopkins: Yes, that is right. We would certainly be happy to look at whether we could provide any education sessions to our members about that. If not, we could provide the opportunity for members of government to come in and run those training sessions with MBA members.

MS CHEYNE: It sounds like that would be helpful. I think we heard from the Property Council that their concern was that, even when they have had examples of fantastic pre-DA consultation, if there is just one person who is up in arms about it, it can all get delayed and be held up through these third-party appeal rights. How do we balance that? If developers want to be doing the right thing by the community, the community still wants to have their say, and there might be someone who is not being vexatious but who is genuinely concerned. How do we make sure that it is not being misused?

Mr Hopkins: I think you have heard our point a few times about reducing third-party appeal rights.

MS CHEYNE: Yes.

Mr Hopkins: What needs to be, if you like, traded in that whole discussion is more consultation earlier in the process with the community and more access to information earlier in the process and throughout the process with the community. I would certainly support measures or recommendations from this committee which go towards encouraging that greater and earlier consultation in return for some relief in the legal process at the end of the DA process.

The big proviso is that the application is in accordance with the Territory Plan, and it is not for an abattoir being proposed in a residential 1 zone. Obviously, something like that, you would think, would carry third-party appeal rights. But if it is a dual occupancy in an appropriate zone that meets the appropriate planning controls, there should be an expectation on the part of the developer that that application will be approved, subject to reasonable and relevant conditions, without lengthy delays through an appeal process.

MS CHEYNE: I am not sure if you said this or if it was the Property Council: do you also support increasing the fee to lodge something with ACAT?

Mr Hopkins: Yes, we spoke about that earlier. My answer is that if government offered that, developers would certainly take it up. I would suggest that it is not necessarily the best solution. You would need to consider what are, often,

non-corporation developers—mums and dads or small superannuation funds—who maybe do not have the capacity to pay that increased fee but still have a reasonable expectation of getting their development approved in a reasonable time frame.

THE CHAIR: Thank you very much, Mr Hopkins. We will send you a copy of the *Hansard* transcript. If you have any issues, let the secretary know. We will take a short break

Hearing suspended from 11.30 to 11.46 am.

LEESON, MR PHILIP, President, ACT Chapter, Australian Institute of Architects
McPHERSON, MR DEAN, Australian Institute of Architects
LEONG, MS YURI, Australian Institute of Architects
DE ROME, MS JESSICA, Australian Institute of Architects

THE CHAIR: Good morning and I thank the representatives of the Institute of Architects for joining us. Before we start the formal hearing, I draw your attention to the pink privilege statement in front of you. Can you confirm for the record that you have seen it and understand it?

Mr Leeson: Yes.

THE CHAIR: Before we go to questions, would one of you like to make an opening statement?

Mr Leeson: Yes, thank you for the opportunity to present to this inquiry into the development application process. As the president of the ACT Chapter of the Australian Institute of Architects, along with my colleagues Yuri, Dean and Jess, we represent 300 professional members who have firsthand experience in lodging DAs.

The Institute of Architects works to improve the built environment by promoting quality, responsible and sustainable design. Our members work with the community and, as professionals, act in the public interest across a range of residential, commercial and urban projects.

My comments this morning, and this is reflected in our written submission, revolve around four broad themes: a design-led approvals process; communication and consistency; processing times for applications; community consultation and ACAT appeals. I will touch on each of these but will keep my comments brief as we would welcome the opportunity to discuss areas of focus that the committee may have.

As a whole, we support the planning approvals process and congratulate EPSDD—I am going to call it "the directorate"—for its efforts in continually reviewing the processes. While individual staff are doing the best they can, there is a backlog of DAs at present. Our view is that the planners would benefit from greater resourcing and expertise in order to process DAs more efficiently. We are happy to collaborate with the directorate and to work on this solution.

I turn to the first broad theme, design-led approvals process. We would like to see a design-led and outcomes-based approvals process that will foster design excellence and flexibility and deliver quality planning outcomes in our city. At the moment our view is that design quality has been constrained by a rigid set of rules accompanied by a tick-box approach to the processing of DAs where quality design is being watered down so it can make that tick-box approach work through to the next stage.

Our second theme is communication and consistency in the DA process. The key issue here is that a DA is often not viewed holistically and with a focus on design performance. Instead, a DA is passed between different entities or personnel who assess technical compliance issues independently without consideration of the larger

planning outcome.

To achieve an outcomes-focused planning approval framework, rather than the existing prescriptive framework, we suggest that greater communication and collaboration between government agencies is essential. For example, setting up early cross-agency consultation to discuss proposed design ideas and concepts prior to preliminary design is not a new suggestion but we would like to see this implemented more broadly.

For major DAs, we are hopeful that the implementation of the design review panel will see better coordination between agencies and deliver best practice outcomes, which would be a win for all.

In terms of pre-application meetings, we would like the applicants, including mums and dads, to have the ability to meet with assessing officers at the early design stage to ask questions before plans are lodged. This would require a change in approach from the attending officers, authorities and customer services team.

I move on to the e-development platform, part of our communication heading. With regard to that system, over the past three years we have been liaising with the directorate with respect to improvements to the system, which is clunky to use and cannot be used on modern, secure web browsers. We would like to contribute further to the development of this portal and, given its importance, we would like to see some hard deadlines in respect to its introduction.

The third point is processing times for DA applications. Even the simplest DA can take three to four months. Our view is that some of the inefficiency regarding time frames points back to problems in communication and overly complex systems. For example, the current completeness check has become an additional review period that is outside the statutory DA review period and leads to double handling. The process could be enhanced by conversations with assessing officers.

Similar to the simplified DA process for single housing, we feel that simpler assessment processes could be employed for other categories of development, such as secondary residences, dual occupancies and small-scale multi-residential projects.

The fourth point is community consultation and ACAT appeals. The current DA assessment process does not allow an objector to see how their concerns have been responded to. There is no mechanism to inform the objector of the outcome of their objection. The only available pathway is the ACAT appeal process, which is not an appropriate process for objector feedback.

We are supportive of the ACAT process. However, consideration may need to be given to how vexatious claims are handled to reduce delays in the DA process. We would be pleased to answer any questions from the committee.

THE CHAIR: Thank you, Mr Leeson. I refer to your last comment about vexatious claims. Have you any ideas about how they could be prevented from going to ACAT?

Mr Leeson: Does anyone have an answer to that?

Mr McPherson: I am happy to respond. I think other presentations have discussed mediation as a bridge in the middle there. I think the point was also made around equity between being able to lodge an ACAT appeal for around $200 and the ongoing cost for someone actually defending a design in ACAT.

So the key issue there is that it is not equitable. The ability for the mediation process to actually avoid it going to ACAT would be stronger and the ability for vexatious claimants or appellants to actually have costs awarded is something that others have mentioned. We think that is worthy of consideration to make it equitable. Obviously, the cost to some developers and clients is significant in comparison to the ease with which an appeal can be carried on or can delay a development.

MR MILLIGAN: If costs were awarded, would that deter people from taking forward an appeal to a DA? Would there be the worry that they would have to be forced to pay costs that could be quite substantial?

Mr McPherson: I think that is subject to the detail around that. If it has gone all the way through to the third ACAT appeal or to the Supreme Court, obviously it is easier to address. Obviously, we do not want to restrict the public from being able to object to a design or a development, but there has to be the ability to make it more equitable and stop vexatious claims or someone constantly appealing the same development in the same area.

MR PARTON: How do you determine what is vexatious? I think, as the chair was saying earlier, it is just about never vexatious to the person who has made the complaint. They see real merit in it. How do we determine what is a vexatious claim?

Mr McPherson: Without getting into the legal side of it, if you have lodged an appeal that is not based on any particular criterion or issue and you have gone through that appeal three times just picking on clauses and various items to appeal, obviously if you have lost several times through ACAT and you are going to take it to the Supreme Court, at some point there needs to be some discussion around whether that is vexatious.

MR PARTON: I said to the community panel earlier that if we were to open every development application up to a committee of 300,000 people in terms of everyone who could comment in Canberra, nothing would get built. Would you agree with that?

Mr Leeson: I think that is highly probable.

THE CHAIR: We heard evidence earlier that basically nothing should go to ACAT because ACTPLA should be able to be trusted to correctly identify any compliance issues. So basically everything should be compliant. Therefore, there should be no need for an ACAT. Would you think that is a feasible state? I think you would probably agree with me that it is not the current state that every decision ACTPLA makes is 100 per cent unquestionable. Would you think that it would be possible to reach that stage, though, that all developments could be evaluated with absolutely no question that all the rules and criteria have been met? Thus, there would be no conceivable need for an ACAT of some sort or do you think there is always

going to be a need for one?

Mr Leeson: I would have thought that there is likely to be a need for one. I might cite an example of an ACT public housing project where the yield has been reduced significantly from earlier schemes. That was through mediation and some appeals. That was a project on community land where there are no highly specific rules that determine what can and cannot be done. As the architects, we felt that we were planning very sensibly and equitably, having due regard to neighbours and so forth. But that did not stop a lot of appeals that are ongoing. So in those sorts of instances, I think it would be very difficult. Yuri, what would be the position when you are dealing with a commercial building site?

Ms Leong: Some of the earlier points that were made were about the DA process being a bit of a tick-box sort of thing. I think it is absolutely important that there is the ability to have an ACAT process. But as Dean mentioned earlier, I think there needs to be a bit of a review as to the equitable nature of, say, an ACAT appeal process for a single dwelling house as opposed to, say, a $70 million development. At the moment in terms of the appeal process and the time frames, it is all seen as the same.

In terms of responding to the tick-box process of the DA process, I think it is important given that there are a lot of DAs that are put in that assess criteria and those criteria are obviously viewed by particular assessing officers at the directorate. So I think in terms of certain developments, yes, the ACAT process is important to still have as an avenue but I think it would be important that there is that opportunity for mediation in between. I think it is not something that should be an automatic reference point for any project.

MS ORR: A number of people, including you, have raised the idea of a design-led approvals process or of having design feature more prominently. Can you elaborate on what you mean by that and how a process that is design led could operate and function?

Mr McPherson: In our industry there is the ability for our industry to look at an alternative solution path or a performance solution path. The major projects review path is one path to that where you focus on the design outcome rather than the rules and criteria. We have talked about mediation and the ACAT appeals process itself. If that discussion were more around the design outcome rather than the legal view of the criteria, we would probably get some better outcomes.

If mediation were more about that discussion—what are we trying to achieve here with a development, what is the best outcome we can get?—rather than arguing around the rules and criteria, we would probably get better outcomes for our city.

MS ORR: One of the things we heard from the community panel was that there should be a stricter enforcement of the rules, which probably seems contrary to what you have just raised. How would you see it working where the community could have the confidence that they are seeking but you could have, say, the innovation of a design function? Is there any suggestion you can make to remedy the two sides of the discussion?

Ms de Rome: I think sticking to the rules definitely has a place in simple kinds of developments that should not be ruffling feathers, that can fit, that everyone is confident with and where they know what will be expected. I think in larger areas or unique sites there is always design. It needs to be customised; it needs to be unique. I think in terms of a mechanism, perhaps it is in the form of a review group made up of professionals who are working towards the best outcome. I do not think a set of rules can apply to all sites. Therefore, we need to view it holistically. So I think it needs to be site specific and led by professionals.

MR MILLIGAN: I want to refer to the extra costs associated with the delay in relation to DA applications and how those costs are passed through to the end result: the consumers, the people that are buying residential property or the business owners going into lease commercial properties. How much, potentially, can a delay add? I know it may be a bit difficult to give an exact figure. However, is there a high likelihood, and does it impact a lot of developments?

Ms Leong: Absolutely; it is a huge impact. There are stipulated approval times that are advertised on the directorate's website as to how many weeks they will take to provide a determination for a DA development. What happens if these are delayed? There are site teams; there are whole project teams. Through to the DA process, there are always discussions with the assessing officers; and especially for very large projects, there is often a lot of discussion about in-principle approval and in-principle support of a development.

In terms of the risk assessment given to a particular project that may be in the approval process, there is already a level of programming and forward planning that goes into the site team that would then, in turn, be looking to start construction on that project. On any construction site, there are always going to be lead times for ordering materials, getting cranes on site and booking in trades. All of those sorts of things are just ongoing things that slip because of DA approval processes going past their stipulated approval time frames.

MR MILLIGAN: In other words, before construction commences, even if the pre-consultation process were extended or lengthened, that could potentially add to the cost of construction due to the developer having to pay for the land and pay the banks. Not being able to start construction as early as they want, they have to service that loan. Is there a limit to how long a consultation process should be, in your opinion?

Ms Leong: I think it needs to be reviewed on a case-by-case basis. Every project is different, and every project is on a different site and has different constraints. Every design would have different criteria and rules that it would meet or address. I do not think it is necessarily about putting a blanket rule onto any development or any project. There needs to be an equitable way in which the scale of the project is assessed in terms of that impact.

MS CHEYNE: On your comments that the completeness check falls short where applications do not fit firmly within a checklist, how can we modify the process so that the completeness check is made less rigid but equally effective, or more effective, perhaps?

Ms de Rome: With the completeness check, my view is that each DA is quite different and has its uniqueness. It comes back down to communication. If we have the opportunity to say, "This is the DA. These are the parameters of it. This is the unique solution. These are the issues we have that are site specific," we could perhaps almost give the directorate a heads-up about what we need to be submitting. Often we submit something that is reasonably complex and then we get back, "This failed for this reason", and, actually, if you look at holistically, it's like: "That piece of information was not there for this reason" or "It is referred to here." I think it comes back down to communication and perhaps not double-handling tasks, just getting the information across once.

When the system is broken up across a number of components within the directorate, one person is looking at one checklist to look at documents and another person then looks into it in more detail. It is just bringing some of those processes together and allowing a bit more communication between us as the applicants and the person who is seeing it with fresh eyes for the first time. I think that would help.

Mr McPherson: It is a key item of frustration for the industry, the tech check process, the ability for that time to elapse and on the last day identifying that the public notification plans are missing from the set. It would be a very simple, quick thing to pick up the phone and request it and have it not stall that approvals time frame. We are often finding that those windows are creeping in. Requests for additional information within the DA process itself all extend these DA time frames out. The entity process is something that has not been talked about, but the ability for entities to delay those processes is a key frustration for the industry.

MS CHEYNE: That is a good point that we have heard from community groups as well: "Sometimes we see DAs that are incomplete, and we tell EPSDD that they are incomplete. That is holding up the process." It is about if there were better scrutiny before it went live, and also picking up the phone to you. I am sure that developers do not want to be putting out DAs that are incomplete and are going to fail before they have passed the first test. If there were some more of that collaborative working together, that would assist.

Ms Leong: In that way the completeness check could work concurrently with the lodgement process, the approval process. At the moment it appears that there is a separate gateway team that reviews the documents that have been lodged for completeness, to check whether they are complete to then proceed to the application process. It would appear that the two processes could work concurrently with each other. In that way, the gateway team could also discuss with the assessing officer whether it is worth failing a completeness check because a certain document is missing or whether it is worth just making that phone call and asking for that information.

MR PARTON: I want to take us back to something that Mr Milligan was asking about, about costs and what delays cost. We heard Adina from the Property Council earlier talk about some projects where they had set aside $5 million for potential delays. I thought, "Wow, that's a lot of money." In the break, I had a bit of a read of the AHURI submission to this inquiry. They had done a little table on the impact of a

six-month DA delay on finance costs in particular. It is something that we have not discussed a great deal in the context of this hearing. They are pointing out the finance costs, in particular, for a six-month delay. Then, if you push it out to a 12-month delay, they are astronomical. Do you have feedback on that, on specifically the finance costs?

Mr Leeson: I am not sure that we as architects necessarily are on top of that.

MR PARTON: You get feedback, but it is just angry feedback from your people?

Mr Leeson: That is right.

MR PARTON: Can I then lead you to something which is in your submission in regard to the e-development system—and you guys are not the only ones to give us this feedback—that it is quite clunky to use and it is not as functional perhaps as it was designed to be. Talk to me.

Mr McPherson: Just answering your question around funding and delay costs very quickly, you have mentioned finance. There are holding costs; there is a contingency that you might put aside. But I mentioned in the Property Council submission that there are ongoing costs to the territory. While as architects we cannot talk to the experience of developers and their costs, we can talk to project-specific costs. The delays go much further than those finance and holding costs. They go right down to the yield for the development in some cases, right down to the ability to, as we alluded to, knock off a floor, et cetera. The costs to the territory are significant around DA processing delays and appeals.

Moving on from that to the development platform, as Phillip alluded to, three years ago we started consultation jointly with the Property Council on this around the platform for the funding that was given at the time. That has taken three years, as I understand. I am trying to think of the term for the IT contractor; they have a particular term for it. Anyway, they are engaged and they are starting that process. We have been following up on that process and there has been no other way to describe it other than that it has been incredibly slow. It is an element that affects our industry greatly as to where we lodge our DAs. It is where additional information is lodged, and it is pretty clunky.

MR PARTON: What do you see as the biggest problem with it as it operates now?

Mr Leeson: It does not operate on a lot of computer systems. You have to have an old-fashioned bit of software that is not compatible with some computers. You spend a day trying to lodge a set of plans over the internet, but you end up having to call people directly and maybe even emailing drawings as a separate exercise. They do not like that because it does not fit into the system. It is just that technology has not caught up or has not kept up with computer systems.

Mr McPherson: It is clunky. It uses Internet Explorer; it uses another one which is superseded.

Ms Leong: Silverlight.

Mr McPherson: Silverlight; thank you. It is superseded. The key concern I would like to raise is this. The industry has been very keen to consult on it. Three years has passed by when we have put a fair bit of effort into saying, "This is how the industry operates on other platforms. PS: we understand that your entities aren't using the same system and are receiving emails for DAs still." It is very antiquated. The ability to engage with industry again, given the interest we have shown, and show us what they are thinking around the interface and the engagement with that platform would be great.

MR PARTON: When we had the community council panel here earlier, a number of them suggested that much information is often missing online when it comes to assessing DAs. Is it feasible that one of the reasons that information is missing is that lack of compatibility?

Mr McPherson: Unlikely. If there is an opinion that information is missing, well, there is a checklist that is very clear around the information that is required for a DA. If it is missing, it is because it was not required to go to public consultation, I imagine. There might be an expectation from that community group that that information should be available when statutorily it is not.

MR PARTON: Thank you.

THE CHAIR: Your members have been dealing with the DA system for decades. Is there anything that is either getting specifically better or, unfortunately, getting worse?

Mr Leeson: Is it better or worse?

Mr McPherson: Is there anything that is getting better or worse?

THE CHAIR: Is there any specific thing? It is not so much as a whole, but is there anything that has gotten worse, say, in the past couple of decades, apart from e-development, which we have already heard about?

Ms de Rome: I think the thing that has gotten better is probably that with minor departures from the code mechanism—with the private certifier typically looking after a single residential—unless it is a minor variation, the directorate has their go at it. That is a streamlined system, and it almost bypasses all the nitty-gritty with the directorate. If it goes into the full DA system, that is where I think we are finding that we are getting more and more complexity, more and more levels of delays and things like that, because the system is so complex. Where it has become quite simple and only interacting with the directorate where it needs to, that is where we have our wins and losses.

Mr Leeson: We have also noticed that in an appeals process the people assisting the commissioner—is this what they are called?—sometimes give design advice. It is not really their role to suggest changes to design rather than saying, "Yes, it's okay" or "No, it's not." It is offering design advice which is just the opinion of one person rather than having an assessing officer review it holistically.

Mr McPherson: Just on that question, one of the things that is pleasing is the general industry and community view right down to the minister's statement of planning intent of 2015 that a design-led outcome that allows innovation is what we are all after. As we alluded to earlier in the PCA submission, Ben Ponton's statement was around "Come and see us around a departure or a noncompliant if it's a good design outcome." The message is good around that from everybody; what is not flowing down is the interface at EPSDD to have that discussion.

As architects and people who have contacts at EPSDD, we can make that phone call and request that meeting. I worry about the mums and dads and the other developers, if you like, who do not see that as an option and dumb it down because they are not prepared to have that discussion around a better design outcome and innovating slightly. That is a key point.

THE CHAIR: Thank you very much for coming. A copy of the transcript will be sent to you. If you have any changes you would like to make, please send them back to the committee secretary.

Short suspension.

FITZPATRICK, MR TREVOR, Planning Institute of Australia ACT Division
CONNOR, MR ANDREW, Planning Institute of Australia ACT Division

THE CHAIR: Thank you for appearing this afternoon. I draw your attention to the privilege statement. Can you indicate for the record that you understand and agree with the implications?

Mr Fitzpatrick: Yes.

Mr Connor: Yes.

THE CHAIR: Would you like to make a brief opening statement?

Mr Fitzpatrick: Thank you, Madam Chair. Andrew Connor and I are here in the capacity as a member and as a volunteer on the committee, so we do not come to the committee with any specific professional point of view. However, we openly declare we are both employed by private planning companies and we are both intimately involved on a day-to-day basis in the development application process and have extensive experience and experiences in the DA processes. So from that professional basis, we offer our skills to the Planning Institute, but we are here today as volunteers of the Planning Institute of Australia.

I will make a brief statement which, in a sense, is a summary of our submission to the inquiry. The Planning Institute of Australia is often shortened to PIA, so if I say the word "PIA", please understand that that is the acronym of our institute.

We wish to highlight that the terms of reference of the inquiry are of significant relevance to the work of PIA members. PIA ACT seeks the same outcomes as the Canberra community, that is, to have an efficient and effective development application process achieving the best possible urban design built-form outcomes.

We consider continuous improvement of the development application processes will contribute to the achievement of good planning outcomes for the benefit of Canberra. However, PIA ACT accept that there will always be debates over what constitutes a good planning outcome.

As part of our submission to the inquiry PIA held three workshops to gain the broadest possible feedback from our members. If I may use a phrase that is used in other political arenas, the PIA membership is quite a broad church, but not in the same way that that term has been used in political spheres.

The broad church we are talking about is that PIA members comprise a number of members who are consultants working in the day-to-day field with the DA processes and interacting with ACT government staff as part of their professional livelihood. Numerous PIA members are also engaged by government doing the work of government directly involved in DA assessment. That includes people who work with EPSDD, in ACTPLA and other ACT agencies. Then, of course, there are other PIA members who do not work in the DA field on a regular day-to-day basis but by their professional nature are certainly intimately involved in the outcomes of the

DA process.

Those three classes of membership, if I can call them that, were the subject of different workshops that we went through using the terms of reference as a guide to those workshops to get broad feedback from our membership, and that formed the basis of our submission. So we are confident we have given the inquiry advice from a professional planning perspective in the broad range of influences of the planning profession.

To summarise some of the points of the institute specifically relating to the terms of reference of the committee, I will just go through them in a dot point format. In relation to accessibility and clarity of information, PIA support additional information being made available. However, whether that is the DA finder app, notices of decision amendments, the website information in whatever form, we support it provided this does not divert professional planning resources and staff from time allocated to DA assessment. Such administrative tasks should not be undertaken by professional planning officers in government.

With regard to pre-DA consultation, PIA agree that early consultation with the community is an important component of the development process. However, we acknowledge the difference when there are specific development proposals subject to community consultation as opposed to more strategic planning projects such as area master plans and the like. We consider the extent of pre-DA consultation currently prescribed under the November 2017 guidelines as being appropriate.

In relation to information required for lodgement of a DA, PIA consider the information requested by ACTPLA for DA lodgement is appropriate and is quite similar to that required in other jurisdictions. We are, however, concerned that not all DA lodgements are consistent in regard to the scope and quality of the information provided to support the application.

With regard to the current development assessment track, we feel the current track assessment system is not well understood by the community. However, we do not see that this is a critical failing in the system itself. We consider the track system results in a tendency for applicants to meet minimum requirements with no real aspiration or incentive to exceed those requirements.

We feel that there is an opportunity to further consider development proposals that could be assessed as code track rather than merit track. The number of current codes and their length and complexity, such as the number of rules and criteria in each code, is considered a significant failure in the system, particularly the extent of mandatory rules.

With regard to the e-development lodgement system, we support the e-development system and we support continuous improvement to meet current industry standards. PIA is concerned, however, that the initial DA completeness check process has evolved into an extended administrative and quasi assessment process, often taking many weeks to achieve an outcome.

PIA also believe a real-time information tracking system would be of benefit. We

want the ability to be able to determine where a DA is up to in detail, not just "Awaiting decision" or "Being assessed", which is the level of information you currently receive when you make inquiries about a DA. A real-time information system would reduce the number of calls applicants make to assaying officers and, therefore, free up their time to allow further assessment of applications rather than receiving ongoing inquiries.

With regard to processing times for applications, we note that the timeliness of DA assessment will always be an issue of concern for industry no matter what time frame it is. It will always be of concern, and we accept that. We believe the statutory time frames for ACTPLA determination of a DA are considered reasonable. However, the percentage of DAs achieving that time frame could be significantly increased through better resourcing of professional planning officers within ACTPLA.

There is also an opportunity to provide different statutory time frames to different forms of development. Having the same time frame for minor DAs as major DAs is not considered appropriate. We are concerned about the increasing administrative tasks affecting the proportion of time assessment planners spend on assessing DAs.

With regard to retrospective development applications, PIA acknowledge community concerns that highlight that retrospective DAs are sometimes seen as a reward to somebody who has not followed the rules. However, PIA feel that if an unauthorised action can be corrected through a retrospective DA, it seems futile to require the proponent to, for example, demolish a minor structure and then re-erect that structure when approval was granted on the basis that there was a strong likelihood that approval would be granted for that structure anyway.

With regard to consideration of appeal processes, PIA is concerned that applicants do not really have any alternative pathway to the statutory time frames in the ACTPLA processes. The option to appeal to ACAT does not assist an applicant. ACAT's track record is always to take much longer than ACTPLA would ever take to deal with a DA. If a statutory time frame passes and an applicant is frustrated with the government processes and not getting anywhere, other jurisdictions generally facilitate a right of appeal in that process. That opportunity is available in the ACT but, in practical circumstances, because of ACAT's track record, it is not a practical path for an applicant.

In relation to last item on the committee's inquiry into other practices, planning in the ACT was once at the cutting edge across Australia and other jurisdictions looked to the ACT. PIA have become more and more concerned that if the norm becomes that the ACT simply looks at what other jurisdictions are doing, it is certainly a sign that the resources being given to planning, the government support for other quasi or non-government facilities such as CURF, local universities and the like, are not at the level they should be. The national capital should be at the cutting edge of planning research and planning innovation, and PIA would certainly look for the ACT to achieve that outcome.

THE CHAIR: Page 8 of your submission is your government workshop page. It says:

> The Government workshop considered that the numbers of retrospective

> DAs were increasing and this was a result of proponents simply undertaking some activity that should have been the subject to a DA, but avoided the DA process. There is common knowledge among the development industry that the ACT Government is not strong on compliance.

Given that it was part of the government workshop, it presumably was someone working for the ACT government. You were a little bit more positive about retrospective DAs in your discussion of it. What do you think the solution is? Clearly, some people see that retrospective DAs sometimes go in for things that may possibly not have been approved had it been put in the original DA.

Mr Fitzpatrick: From a viewpoint for the past 20 years as an applicant but prior to that I worked in ACT government and in local government and in councils—and this is a personal view, not necessarily the view of the Planning Institute—there are benefits for the assessing officer in the development already having been on the ground in some circumstances.

If the issue is a structure that is potentially close to the boundary or has some sort of visual impact or what have you, if it is already built, it very easy to contemplate what those impacts are from an assessment point of view and whether they are acceptable. However, you can then say, "We're not going to approve it. It just doesn't meet the standards and now it has to be demolished."

The trick is to not allow that noncompliance activity to be rewarded in whatever way that might be the case. If that means that the assessing officer then takes a more lenient approach to what they would if the structure was not there, then I agree with the concerns; that is totally wrong. In effect, a harsher standard needs to be met if the structure is already there.

THE CHAIR: It does seem to be the case that people are concerned that if it has been built it should stay rather than whether the rules were followed in the first place. As the quote said, it is common knowledge among the development industry that the ACT government is not strong on compliance. What do you think should be done to make the system fairer for all concerned?

Mr Fitzpatrick: The current compliance is, as I understand it, totally reactive. It just requires a complainant to make an action first and then the compliance section determines whether or not they will take action from there. But if that action, as I was mentioning, is not, "You must demolish and then lodge an application then build," and if the action is, "If that noncompliance can be rectified through a DA lodgement and there are not any major concerns," that is an appropriate administrative path to follow in many circumstances.

It may be, for example—and this is where I understand a degree of industry is—that during the course of a construction, particularly a major development, products and materials shown on the development application at the time the design was done may not be available at the necessary time.

That developer has the option to basically close down construction, lodge an amended application for a different material, wait that time frame, bring back the tradespeople

and the like and continue on, or they can take the punt to bring in an alternative material, do it and then seek retrospective approval for that amendment. On the basis that the amendment is similar and is a minor change, it is hard to see how that would be major problem.

THE CHAIR: I guess it is one of these ones where it depends on what the intention is. I was just thinking of an example that I am aware of where a DA went in with an interesting front—it was not just a straight concrete front—and it has been changed to a very boring, flat concrete front which people would have objected to in a way that they did not object to the original DA. There do not seem to be any consequences.

Mr Fitzpatrick: Absolutely. I guess from a PIA perspective we would support totally your view there. If there are examples where applications are lodged and effectively the good design elements or what have you or the higher quality material are value-managed out of that process through the construction process, we would support the strongest action totally on that sort of approach. We do not support that at all. If a DA is lodged and it sells the story of the quality of the design outcome of that development, that should be entrenched and yes, to me, I think that PIA would totally support actions in that regard. What those actions are, I guess, is a matter of the strength of the compliance section within government.

Mr Connor: And condition of consent. In other jurisdictions I know those sorts of issues are creeping in with quality outcomes in urban areas. In other areas councils are putting conditions on that are quite prescriptive to ensure that any variation from the materials and finishes may require a modification or that sort of thing.

Just going back to people not undertaking works and then perhaps compliance not following without objection, there are probably two ways to look at it. Planning is looking at, I suppose, the actual physical structure, whether or not it is appropriate in that position. But there are a whole range of, I guess, building issues to do with certification and a whole range of other things that could be used as tools perhaps to reduce someone's likelihood of going down that path, fines and all those sorts of things.

In terms of what is actually happening on a compliance frontage, that is probably a different question. But whether or not the mechanisms are there for government to ensure that, it is not a great path for someone to go down as opposed to going down the proper route, which is to get the DA approval, which is what ideally everyone wants.

Mr Fitzpatrick: You asked for a suggestion—and excuse me if this is nothing more than a thought bubble in some respects—but we are a fairly localised development industry here. There is significant opportunity to send messages to that industry, and it is not a difficult process. That message does not need to be a big stick on the head of one particular developer but, in New South Wales, there is a series of planning circulars that occurs and the industry generally subscribes to these circulars. It would only take a message from the chief planner, "There have been recent examples of X. We are focusing more on that. And we will not accept certain things," or what have you, whatever they might be, and send messages like that to the development industry.

I think that would have some degree of success. If you were in the building industry and you were thinking blindly, "Oh, I can totally change that cladding and I'll get it approved right at the end with a whole bunch of other amendments that we'll just do and it will be at the end and we'll get them all stamped and that will be okay," if that sends a message, "Hang on a sec, your risk factor just increased significantly," and if you get to the end government can say, "We put you on notice. Here was this thing we distributed and there's no sympathy for you at all if it does not work out right."

MS ORR: You mentioned in your opening statement that the ACT used to be viewed as a leader and at the cutting edge and you felt that that might be not so anymore. Can you give us an indication of what might change that, in your opinion?

Mr Fitzpatrick: I do not have any immediate answers but my comments, which were the broader comments of PIA's ACT division, reflected that the inquiry's terms of reference included advice on what is happening in other jurisdictions, and that reflected, "Have we inadvertently or otherwise become a follower, not a leader any longer?" We all might look through the history of Canberra through rose-coloured glasses but I would still like to think that as the national capital we should be the leader, that if I were working for New South Wales planning I would think, "Oh, how do I address this issue? Oh, let's find out what Canberra does." I do not think they do that anymore. We are saying, "Oh, what does Sydney do?" I would like that to be reversed.

I do not have the answers, unfortunately, sorry about that, but from a PIA ACT position that is where we would like it to be, even if it meant more emphasis and support to, as I said, the universities. We have had a planning course at the University of Canberra which has struggled and I understand has pretty much wound down now. We do have CURF and various other entities that I think would always like more government support, things like that to become the leading edge, to become the place where everybody looks to for new innovation and ideas in planning.

MS ORR: Did you want to add anything?

Mr Connor: Yes. I think in planning divisions across Australia, no matter what jurisdiction, quite a common theme is that they are not as well resourced as perhaps they were back in the day. That is not to say that they are not at the moment doing fantastic work. I am sure EPSDD are in the strategic planning team, but I guess it is having that capacity to undertake the research, to have the local knowledge, the site specific, knowing your town, knowing your area, knowing the outcomes that you want.

There are learnings to get from other jurisdictions, Sydney for instance, that have gone down paths of densification and are having issues. But, certainly, where there is a capacity to lead, that is something that I think would be really good and something that needs to happen.

I have a background in New South Wales planning but I think in a lot of ways the ACT does things very well. In a lot of ways New South Wales does things a bit simpler, maybe better in certain ways. But I guess that is the nature of having a number of jurisdictions everywhere. I think there is the learning across jurisdictions

that could occur as well. And maybe this is thinking bigger.

I know PIA has been looking at the national body. There is a cities minister in the commonwealth government and there is, I guess, an idea to coordinate planning across from the commonwealth level and whether or not there are engagements at that level to learn from different density issues or greenfield or environmental matters and those sorts of things. There is planning occurring right on the border of the ACT. We are surrounded by New South Wales; so it would make sense to coordinate things right away. But I do not have the how you do it.

MS ORR: The silver bullet.

Mr Connor: Yes, exactly.

MR MILLIGAN: My question is in relation to the processing time for development applications. I am intrigued to hear a little more about what you would like to see in real-time tracking of the DA process. What would that look like and how would that assist developers? The second part is to hear a bit more about what you have in your submission in relation to the three tiers of development assessment: minor DAs, commercial, industrial not complex DAs, and then major developments. How did you come about that suggestion?

Mr Fitzpatrick: With the real-time tracking, at the moment the DA assessment process is split up by the officers in ACTPLA in stages. The staff at ACTPLA, I presume, will provide more detail on those stages, but effectively stage 1 is the preliminaries and what have you, stage 2 is DA assessment, stage 3 assessment of public submissions, stage 4 is assessment of entity commentary, stage 5 is whether it needs to go to major projects review group, and stage 6 is the approval.

At the moment if you make an inquiry you are told it is in stage 2. "Yeah, well, I know that." And for the next six weeks my inquiry will be met with, "It's in stage 2." So nothing of any value is there. TCCS may have within that six weeks sent an email to EPSDD saying they do not support the driveway or the waste room, or EPA might say they do not support the noise management plan.

If we had have had real-time responses to that, as an applicant we could deal with that in that same period of time. We could overlap those issues. I could solve the assessing officer's problems basically. If he gets to the end and says, "Oh, I've got a noise problem to deal with," well, maybe he does not. If he had have communicated that information to the applicant right at the start as soon as he knew about it in real time to say, "There are some concerns about the noise reports," we could go back to our noise consultant, see whether we could resolve that, provide supplementary information and solve the problem during that period.

It does not add to the time frame of the assessment. The real-time information would allow the applicant to have an interactive involvement in the process. It would solve the problem and make life a whole lot easier for that assessing officer at the end of it all because they did not have to agonise over, "Is this problem so bad I should refuse it? Should I impose conditions?" The whole problem would be solved because we have gone back and relooked at something and thought, "Yep, here's the solution,

we'll do that."

It is not just whether it is noise; it could be landscaping, it could be architectural design. We do that all the time. We put forward a design solution that might not be supported by a particular agency because they might have a stronger focus on the size of the waste room or something. The applicant can say, "Oh, yeah, we can tweak that. We can make the waste room bigger and move that around or whatever. Here is the solution."

We would not volunteer it up upfront because we would have thought something else was the best outcome, but if it meets that requirement, we would be prepared to compromise on those things to meet that requirement. That is what is not happening to the extent it can. As I said, the real-time information system can provide those much better processing outcomes.

Mr Connor: It is also how you provide the real-time information to applicants. We understand that the time of the development assessment staff is quite precious and obviously they have a range of things they have to do. You can utilise websites and tracking systems that other jurisdictions use to show where things are up to. We get a lot of emails from e-development systems that come through for notifications for DAs, which are really good.

It saves time on both ends: we do not have to pester the assessment officer as such and they do not have to field our calls. Things can happen in an area where everyone can see where things are up to.

THE CHAIR: Ms Orr has a brief statement she would like to make.

MS ORR: I sought some advice from the chair, and we both agreed. For the record, I am a graduate of the UC planning course and a member of PIA. That is fairly well known, but for the record we will state that.

MR PARTON: I wish I had gone to your workshops; I think it would have been a great little precursor to this. You note in the submission that the government workshop felt the current track assessment system was not understood by the community. Some of that came through when we had our community panel. Can you explain further where you think the holes are? What is it the community thinks that process should deliver and what it actually is?

Mr Fitzpatrick: Tough questions. Basically you have the code, merit and impact tracks. I think it was intended that a whole range of development proposals could fall into that code track and just be subject to a simplified assessment, limited if any public notification and the like and therefore a quicker time frame, which referred to some of the hierarchy of time frames for particular types of DAs.

However, I think where that falls down is that in the development tables under each zone there is minimal and sometimes nothing in the code track listed automatically. Dwelling houses in a residential zone come to mind. Therefore, a whole raft of minor development proposals that have no real planning merit or planning consideration are now in the merit track and subject to a broader level of assessment and community

consultation and the like. That potentially increases expectations from the community about these minor activities.

To me, it adds to the confusion when a development is being advertised for a basic development proposal at the same time as a 20-storey mixed-use development of many hundreds of units. From the community's point of view they are being subjected to the same level of analysis and professional assistance.

MR PARTON: How do you fix that? You do not necessarily want to add another category, do you?

Mr Fitzpatrick: No, we have an incredibly complex situation as it is. The next category down that I did not discuss is a category of dwellings called exempt development. If you look at the legislation, there are 65 pages or thereabouts of developments that you go through a process to find out whether your garden shed in your backyard is exempt from the need for approval or various other activities. The next level is, "Okay, I need to lodge a DA. Am I code track? Am I merit track? Am I impact track?"

So the complexity is already there, but I would argue that the code track could be very similar to the New South Wales system. They have a system of complying development where there is, again, a whole range of categories of developments but basically there is an easier process if you are simply complying. And it is not just for single-dwelling houses; it is a range of other developments as well.

Mr Connor: To try to capture developments they think are reasonable in certain areas New South Wales have expanded compliant development. But that reduces the extent to which you publicly consult on DAs, so there is a push and pull there. I guess there are two ways to manage it: you can manage it through legislation allowing people to go exempt complying or a DA—even though it is a bit different in the ACT—or internally the way you structure your teams to assess DAs you can risk manage DAs into certain areas. The more simple ones you could assess quite quickly where the major ones can go into major assessment groups.

I believe that is how a lot of development planning DA assessment teams do things. There are different ways to do it. You can approach it from many different ways but, as Trevor said, at the moment it is quite restrictive in terms of impact and merit in the ACT.

Mr Fitzpatrick: There is a whole raft of ongoing examples and we could be here all day. But there are basic expectations. We have a zoning system where we are saying suburban areas, housing, shops in shopping centres and the like. If we are saying a shop in a shopping centre, surely we would expect that shop to have a sign. So provided a shop fits within a framework of signs, why do we need to go through a DA and a notification process for the shop to put up the "Trevor's Planning Services" sign? Surely that is what you would expect in a shopping centre. We have added a level of complexity into a process and expectations from the community for something that should be taken for granted.

MS ORR: Yes, just quickly, you note in your submission that there will always be

debates over what form of development constitutes a good planning outcome and go on to talk about the DA process. Can you clarify the importance of the DA process in managing expectations given that there are a lot of views as to what is the good outcome you are trying to achieve?

Mr Fitzpatrick: It is inherent that every application should not just be a statement against criteria that says, "Yeah, I comply with this code." There should be something inherent that says to me as the applicant that the government demands of me to demonstrate why this proposal is a good planning outcome. We can draw on various resource material about urban design quality or what have you, so there is a range of things I can draw on to achieve that. But the fundamental is that it should be incumbent on every single applicant who lodges a DA to say in some way why this achieves a good planning outcome.

We might differ, but that statement should be there and it should allow the community to say, "I oppose this application because I don't agree with that introductory statement. I don't agree that the applicant has demonstrated a good planning outcome because they've used parameters or what have you that just aren't relevant for this particular circumstance." That is a reasonable thing for the DA process to demand of applicants.

Mr Connor: A good planning outcome is looking at everything. You are looking at the design, the built environment, the physical environment and the natural environment. There is a range of different things and there are different ways you characterise development depending on where it is, the factors affecting that site, the zoning and those sorts of things.

It is always going to be highly contested, but it is whether or not you are contesting those matters in the strategic planning section or you are contesting it DA by DA, block by block throughout the ACT. That is a different conversation, which I am sure is a bit different from what you are asking.

Yes, it is a good intention. It is good to have those sorts of ideas around. You were talking to the Institute of Architects before about getting the best design outcomes for the sites and improving urban design quality. So it is a step forward in that direction.

THE CHAIR: Gentlemen, thank you very much. You will be sent a copy of the transcript. If you have any problems with it, please let the secretary know.

Hearing suspended from 12.53 to 2.31 pm.

HOLMES, MS MOIR, Macquarie resident
DAVISON, MRS SANDRA, Macquarie resident

THE CHAIR: Good afternoon. I draw your attention to the pink privilege statements which are in front of you. Can you verify that you are okay with the implications of the statement?

Ms Holmes: I have read it.

Mrs Davison: I have too, thank you.

THE CHAIR: Before we go on to questions, do you have an opening statement?

Ms Holmes: Yes.

Mrs Davison: We do.

Ms Holmes: I am asking permission to table a submission.

THE CHAIR: The committee will accept it.

Ms Holmes: Thank you. I will speak to that document. I will start with the elephant in the room. You are on your back veranda. You are in your own home. It is your only asset. You do not have a view but you might have a bit of an outlook, some trees, and you get a bit of morning sun for that first coffee of the day. Then somebody builds a two-storey wall right in front of you, and there is nothing you can do about it. You lose your outlook. You lose your sunshine. You lose your privacy. Your home is devalued. Somebody else makes half a million dollars and you have to look at it every day for the rest of your life. For the developers, for the directorate, maybe for you, it is business as usual. But for a resident it is life-shattering stuff. You feel victimised, impotent and frustrated. It consumes your days and it goes around and around in your head at night-time. So I am asking you, please, when you are making recommendations, to remember that these decisions have real-life impacts. Do not forget the elephant.

What can you do to help? Grant extensions generously. Getting an extension is like taking off a backpack. You get some space. It makes a huge difference. It is a really humane thing to do, and the system does not grant extensions generously. Be flexible with deadlines. Answer your emails in good time. I am still waiting, 10 days after I sent an email about a point of clarification. The deadline was four days ago. Facilitate freedom of information requests. The time for freedom of information requests is exactly the same as the time for a response. I got a decision. I put in the FOI within an hour of getting the decision. The information arrived three hours before the deadline. And remember that not everybody in our community has a computer. Please do not disenfranchise them. Paper copies must be available. Perhaps we could have some system of justifying that request.

Going to the gateway, plans for release for public assessment contain multiple major errors. Everyone will tell you. Street names are wrong. Block and section numbers are

wrong. You will have three different plans: one will be a dining room; one will be a kitchen; one will be a bathroom. Remember the elephant. The residents are stressed. They have jobs. They have children. They have elderly parents. They are under impossible deadlines. They are not architects, they are not town planners and they are trying to cope with plans that have major errors. We need a much more rigorous check at the gateway so that plans released for public comment have quality. And I think we need to hold the developers to account for producing quality plans. If you want to know how the directorate justifies putting poor plans on the website, ask me later.

The next point is the public good. The sign goes up, you write your representation, in it goes, and back come the plans. You are okay though. In our case, they have moved a window. And then you look at the plans. What about the old lady on the other side? She is 80. English is not her first language. Her house is her only asset and she goes to bed at 8 pm. On the plans the principal living space of a unit is three metres from her bedroom window. There is no visual fence; there is no sound barrier. Who looks after the people who cannot look after themselves? If you want another example, ask Sandy about Arndell Street. What did Gavin and I do? She is a lovely old lady. My husband fixes her computer so she can talk to her daughter in Adelaide. She gives us homemade jam. We have to find $600 to fund an ACAT request for appeal so that she can live in her home, because without sleep you cannot live. Where a request for a review brings to light a clear error in judgment by the directorate, the lodgement fee should be returned.

There is undue pressure. I have freedom of information documents which clearly show a developer pressuring a member of the directorate for a speeded-up approval. As a resident, I get a development next door that takes my sunshine, takes my view and devalues my house. The attitude is, “That is the way it is. Put up with it.” So I say to the developers: “It takes time. That is the way it is. Put up with it. At least for you it is only a year. For me, these developments are for a lifetime.” We have to protect the directorate staff, and a DA takes as long as it takes to do it properly.

The next point is holistic assessment. Most of our residents are concerned at the broad zone level. The process must be changed to include a checklist, maybe on a scale of one to three. Does the development reflect the existing streetscape? Does it provide residential amenity? What is its impact on neighbours? How does it fit the suburb? Does it meet the zone objectives? Every development must be assessed at two levels: the technical rule level and the holistic quality level. Does it provide a good development? Does it meet the zone objectives?

The issue of conditional approvals apparently came up this morning. We have a very good example of the difficulty of negotiating the system with conditional approvals.

On item six, “Justice must be seen to be done”, the evidence for that is verbal. It is directly from somebody in the directorate. I do not have it writing. For every other piece of evidence that is mentioned in our document, we have written evidence to support what we have claimed.

I will keep saying this: please do not forget the human element. Do not forget the elephant.

THE CHAIR: Absolutely not. You talked about the difficulties of going to ACAT. We have heard quite a bit of evidence basically saying it is the other way around: that it is far too easy to go to ACAT, it only costs you $240 and should be harder. Could you say a bit more about why or how going to ACAT is a significant challenge as you see it?

Mrs Davison: I have been at one ACAT appeal just to observe. But now it is on our doorstep. A development in the area, next door to Gavin and Moir's, was approved on conditions, and there are rules that have been broken, so we want to go to ACAT. It is $350 to put your appeal in, then we have to pay sitting fees. That is $150, I believe, per day, and it could go on for days or weeks. So with the cost you are not quite sure what you are up for. It is also the time involved, which is time and money. There are several hearings you have to go to: direction hearings, sitting dates, mediation. Mediation can take all day. So the process can be lengthy. If you have got multiple parties that want to be involved, everybody has to pay the $350 even if you are both on the same page and you are members of the same community. It is a time-consuming process.

The trouble with the one we are thinking of doing right now is that we do not actually have the final plans, the redrafted or whatever plans, to see whether we may not appeal now because the revised plans meet all the rules now. Because the deadline came up to appeal before we got the plans, we had to put our appeal in. So we have done paperwork and paid money and we are going through a process that we may not need to follow through on because the revised plans might come back and they might be okay. But that is the timing, so we have started a process. ACAT staff are working busily to set us up.

Ms Holmes: The issue is the plans are conditionally approved. You get 28 days to lodge a request for a review. I had two solicitors both advise me that I had to put in that request for a review to preserve my right, but I have not got the plans. It is a no-win situation. That is the letter. I have asked ACAT to clarify that for me. I asked days before the deadline. I am still waiting. They do not know the answer. The directorate does not know the answer. The solicitors I spoke to do not know the answer. There is a very big black hole with conditional approvals.

THE CHAIR: Has the ACAT process started?

Mrs Davison: No, it has not started but I have got an email to say that the first hearing is on 28 September.

THE CHAIR: It is currently before ACAT?

Mrs Davison: No, we have not met anybody. We have not done anything.

THE CHAIR: It is lodged there. The reason I ask is that there is a separation of powers and we are not really meant to talk about things which are currently before ACAT. It sounds like this is in that category.

Ms Holmes: I did get a solicitor's advice. I was given advice that there was—yes,

okay.

Mrs Davison: You guys asked the question. We just answered it.

THE CHAIR: Yes, I did not realise. I thought you were going to be telling me about the cases you had already been involved in and that it was not as easy as the development friends said. I did not realise you were starting on another one.

Mrs Davison: The first part of my statement was absolutely my experience as an observer. I was not a party joined. I was not anything. I was just there observing. So the money and the time and so on was to do with something past that I was an observer at. The other thing only came this morning, so how far into the process are we? I am not sure.

MS CHEYNE: Thank you for appearing today on short notice. I appreciate that you have a number of issues and a number of suggestions and solutions. That is great; it is very helpful for us. With all the things that you have suggested, if there were one thing that could come out of this inquiry or recommendation that we would make to government, what would it be? If there were just one thing that would make things better or easier for you, what would it be?

Mrs Davison: Consultation on behalf of the directorate with residents, and consultation by the developer with residents. We talked about consultation on a big scale—it was discussed this morning—but residents who have something going on right next door do not meet the requirement for consultation by developers because it is only a small thing.

There is also help from the directorate. If we go in and ask for help, sometimes you get it; sometimes you do not. The process is very inconsistent. If we ask for an extension, it is really because there are lots of documents to go through and we need a bit more time. We are not asking for extensions because we just want to sit on it for three weeks and pick it up later.

The timing is really critical for us. There is granting extensions if we need them and being open if we go in. With the object community there are different things now; the process seems to be different. I requested a paper copy. I said, "I will come in and pick one up." "No, you cannot have a paper copy." It was not user-friendly at all to me as a resident.

We have had a resident go in and ask a question about a definition of a building. He just got the run-around completely and left frustrated without an answer. That should have been something quick and easy, for someone in the directorate to help him quickly clarify something on a plan. The directorate seems to meet with developers along the way; we have FOI things that show that that happens. But often when residents go in to meet or try to ask questions, we get the run-around and get told, "It is an active process so we cannot talk to you."

MS CHEYNE: You are not asking for extended time in the consultation vexatiously; you are doing it because there are often many pages of documents to get across. Would a solution be that it is not a blanket three weeks for these sorts of consultation

periods but that consultation periods change depending on the complexity of the site or the number of documents? I am not sure what the criteria would be.

Mrs Davison: Yes, the complexity of the development. The one we are talking about has eight in a tiny little cul-de-sac, so it is quite big. There are lots of PDFs to go through. We thought we had been through that process; now it is up for reconsideration, but it is a different process that we are dealing with. This time we received an email. What if I did not look at my home emails for a couple of days? What would happen by the time I read the email and went, "Oh, my goodness. It is back again; this is what we have to do." We then had to wait for an invite to "Object Connect". You had to accept the invitation and then you had to sign terms and conditions. Nobody understood the terms and conditions. I was a bit hesitant in signing. By the time you actually get the plans in front of you, sometimes you could have lost a week. And then you only have the remaining days to look at it. And they are complex.

MS CHEYNE: And with these ones it is only people who have put in an objection in the first place who are being alerted to the fact that there is something new to look at.

Mrs Davison: Absolutely.

MS CHEYNE: And even then when you get that opportunity—

Mrs Davison: It is complicated.

MS CHEYNE: So it is not a matter of where you can click on the website where you went last time. It is: "Here is your invitation to come through here."

Mrs Davison: No, a completely different process. There were 49 PDFs.

Ms Holmes: Could I answer your question in two ways. You said "better and easier". As to better, there has to be some holistic assessment of the development. My observation is that currently the assessment is at the tree level. Nobody stands back and looks at the development from the wood level. They only concentrate on moving a wall by 20 centimetres, bringing the window up. There is no checklist. There are no questions. There is no assessment against the zone objectives at a holistic level. That would make it better. How it would make it easier? Extensions. Take the pressure off people who are trying to come to terms with it.

Mrs Davison: Be consistent as well. With the very first Belbin Place DA that came out, we asked for an extension. It was flat out refused. When we were putting our submission in the night before it was due, one of the neighbours was rushing to put it in. They had a look online; there had been an extension granted. A one-week extension had been given; we were not notified of it. We did not know about it. The sign went away. I rang them up and the sign came back. It is very inconsistent. I do not know why that extension was granted. Tree people came out and people from the department came out. I am only guessing that it would be maybe because the directorate needed more time. But the residents were flat out refused.

Ms Holmes: On my example, I was told, "You do not get extensions." I got two

because I could find procedural errors in both cases. It is very inconsistent.

MS CHEYNE: Finally, I am conscious that I need to be fair to the other people asking questions but what was the directorate's justification for allowing incorrect plans on the public register?

Ms Holmes: I can read it to you, but it was in essence that they had the correct plans so it did not matter. I will look it up while somebody else asks; I will show you.

MS CHEYNE: Yes. Just for the purposes of the whole committee that would be good.

MR PARTON: Can I talk certifiers and certification. In the submission that was circulated moments ago, you have very clearly suggested that certification should be a government responsibility. Talk to me more about how you feel about the certification processes serving you guys or serving the developers.

Ms Holmes: That was my comment. I feel that in this particular development they have used—I will not call it a loophole—a condition in the law which allows them to put more buildings on the space than normal.

Mrs Davison: So adaptable housing.

THE CHAIR: Is this the one before the court, before the ACAT?

Mrs Davison: Yes, it is.

THE CHAIR: Maybe you could talk about another certification issue.

Mrs Davison: That is the only one we know of.

Ms Holmes: I can talk in general terms. It is an area which historically has struggled to be transparent. Development applications have a very poor reputation for honesty. It can make a big difference to somebody if something goes through.

MR PARTON: It is a really interesting, and pretty strong, statement for you to make, that development applications have a strong—

Ms Holmes: I have seen town councils brought down because of development applications. It is an area where you need to be very clear. Because that decision brings with it so much money—let us be fair; they make big money—it has to be transparent, and justice needs to be seen to be done.

MR PARTON: But let us call it out for what you see it as and what you think it is. You are suggesting that the development application process actually seeks to withhold information from you when—

Ms Holmes: No. It is the fact that residents beside me—I cannot get hold of the plans because they are commercial in confidence. I am told that the adaptability box has been ticked. It is ticked not by a government official but by a private certifier. It is not transparent in an area which needs transparency.

Mrs Davison: That is where those comments come from, the adaptability in trying to have a look at the plans to see how that building is going to be built to adaptable standards and Australian standards. We are unable to get anything to show us that.

MR PARTON: Okay.

Ms Holmes: If I may answer Ms Cheyne's question about concerns that the plans and documentation provided contain inconsistencies and errors, it is noted that the perspective drawings included internal layouts that did not match the proposed floor plans provided. However, as these plans provided supportive information and were not stamped as part of the approval, the assessing officer was able to undertake an assessment and make a decision based on the other plans that formed part of the submission.

MR PARTON: In earlier evidence, the Property Council and the MBA, and to some extent architects and the Planning Institute, focused on the fact, which they believe is critical, that community understands the meaning of permissible development. They are saying that if there is a DA on a structure that is already allowed, it is already within the guidelines and they are exasperated that then we have this further argument with residents and other groups. The point that they were making is that surely the argument should be had at the stage that draft variations are made, at the stage that changes to the Territory Plan are made, rather than now. I am keen to seek your viewpoint on that. They are basically saying, "We are building things within the rules, and then we are not allowed to do it."

Mrs Davison: And there probably lies one of the major concerns and issues as to why residents end up in something like this. The RZ2 says that if a block is this big you divide it by a certain number and it equals a certain number, and if it says you can put eight there, you can put eight there. That does not mean that eight fit, and it does not mean that that is then going to meet all the zone objectives. While they meet some of the rules, to do that they might have to cut down every tree on the block, and pull out every shrub and every bit of vegetation, and replace it with hard surfaces. So what they are proposing to put back does not meet all the other—

MR PARTON: Does not fit all the rules?

Mrs Davison: It does not fit the rules. While it might fit in size, no site visits are done by anybody to have a look and say, "Is this is a suitable site to put eight dwellings on?"

MR PARTON: And you have a specific example of that, I believe.

Mrs Davison: We probably cannot talk about that. Certainly Belbin Place is a small cul-de-sac. It has a very small frontage. There are only four or five houses in the street. There are currently a five-bedroom home, a four-bedroom home and two other little things. They want to knock that whole thing down and put eight. If you do the maths, that might work, but the rest of it does not work.

Ms Holmes: I totally, absolutely, utterly agree with everything you said so long as the

rules include fitting the streetscape and having quality development; those things that are there. If you just concentrate on where the walls fit and whether it has enough windows, you can get an absolutely appalling thing that fits all the rules. Yes, I agree it should be much more tick, tick, tick. But it has to include those holistic elements as well. I think it could be significantly streamlined, but at the moment it does not have that holistic thing, and that is what the residents are getting really upset about. So yes, I agree.

Mrs Davison: I suppose the frustration with builders and architects is that yes, they are having to go back. But if the gateway review process was done correctly, it would come to the community without all sorts of errors, without all sorts of inconsistencies, and we might get plans that are not too bad. When we get something that is terrible and inconsistent, with wrong addresses and stuff like that, we are all going back and forth when that process should have been better managed in the beginning by the directorate. Spend the extra couple of days having a look at plans and making sure they are okay, but put it out there for the public to have a look at.

Ms Holmes: With ours, I asked to be involved in the pre-development application process. I wrote and asked to be involved. If I could have been involved then, maybe a lot of these things could have been sorted out before the plans were drawn. I was denied that opportunity.

MS ORR: Can I just clarify who you wrote to?

Ms Holmes: I wrote to the directorate. I said, "I know there is going to be a development beside me," because there had been a lease variation. I said, "Could I be involved in the pre-development application process?" The letter I got back was, "No, you cannot." I did not feel it was appropriate to approach the developer directly; I still do not feel that is appropriate. And I was not given the opportunity to talk in a moderated environment and say, "Look, have you thought about this? Do you realise where the sun is? If you did this, it would be great."

THE CHAIR: Thank you very much, ladies. A transcript will be sent to you in a few days. If there is anything that you think is incorrect, please let the secretary know.

Short suspension.

BOOKER, MS STEPHANIE, Environmental Defenders Office ACT
SILBERT, MS NICOLA, Environmental Defenders Office ACT

THE CHAIR: Thank you very much, Environmental Defenders Office, for appearing this afternoon. Before we get into the actual questioning, may I draw your attention to the pink privilege statement. Can you confirm for the record that you have seen and agree with the privilege implications of it?

Ms Booker: Yes.

Ms Silbert: Yes.

THE CHAIR: Do you have an opening statement?

Ms Booker: We do have an opening statement. The Environmental Defenders Office ACT is a public-interest, community legal centre specialising in environmental law in the ACT and surrounds. We have been operating in the ACT since 1995, which is a total of 23 years.

The role of the EDO is to empower the community to protect the environment through the law. We do so in three ways: to assist the community to protect the environment by providing legal advice and representation; to advocate for better laws to protect the environment in the ACT; and to educate individuals and community on laws relevant to the environment in the ACT and surrounds. EDO ACT provides advice on issues of planning and development and their impact on the environment in the ACT. This is by far the bulk of the advice and representation work that we do.

EDO ACT is therefore pleased that the ACT Standing Committee on Planning and Urban Renewal has launched an inquiry into engagement with development application processes in the ACT, and we are grateful to be given the opportunity to provide evidence to this inquiry.

The concerns that we raised in our 24-page submission to the standing committee have emerged from our experiences with members of the community who are engaging in the development application process. These concerns speak to not just individual developments but to systemic issues in the processing of development applications in the ACT.

A brief summary of our concerns is as follows: limited opportunities for the community to appeal decisions that are likely to affect them, as set out in the Planning and Development Act; a lack of proper and meaningful consultation with community members, and this is illustrated in a number of ways, including limited pre-DA consultations with interested parties that would help to alleviate tensions and resolve conflict between proponents and members of the community; the quality of development applications that contain incomplete information so that community members cannot comment fully on a development proposal; information that is mistaken or poor quality information or information that is not impartial; lack of sufficient time to make representations; the inability to provide comments to new information that comes in on a development proposal; a lack of resources within the

Planning and Land Authority to scrutinise DAs. This means that community members are currently doing the work of the authority in responding to development applications and ensuring that they comply with the law.

Also we have a concern that the website in its current form does not provide applicants with the information they need to inform themselves of the planning process and their role in it. The information that is provided needs to be plain language and currently it is not. And the website does not have one central place within which community members can actually access opportunities to comment. At this current stage there are four separate webpages within the planning website that provide people opportunity to comment.

Community engagement in meaningful participation is a basic principle of international law, and this touches on three fundamental rights: the right to public information, the right to public participation and the right to access justice.

In our submission we have identified a number of recommendations for the improvement of planning and development processes in the ACT, not just in the environment context but generally, and this includes several detailed recommendations on the structure and content of the authority's website. We also suggest improved adherence to the W3C web content accessibility guidelines 2.0. That will not only ensure accessibility to people with a range of abilities but people in general.

We have made recommendations that increase opportunities for the community to comment during the consultation period, including extending the minimum consultation period from 15 working days to 30 days; proper information provided at the outset for larger DAs where smaller ones are part of larger ones—just to provide that context, information that comes from pre-DA consultations between the authority and developers is made transparent; and that the requirement for pre-DA consultations that involve community members and the developer is expanded.

In addition, we provided recommendations to increase opportunities for citizen participation through ACAT and the courts and that the Planning and Development Act be amended to allow for standing for any person or entity that makes a representation during the public commenting period, amending the Planning and Development Act to expand the list of decisions that third parties can have reviewed at ACAT.

We have concerns about both the EIS and the EIS exemption processes. We recommend mechanisms to ensure that EISs are assessed independently by experts, and we have identified four procedural issues with the EIS exemption process and recommend that a precautionary approach be taken with respect to assessment of EIS exemption applications.

In terms of barriers to enforcement, we recommend proper resourcing of the Planning and Land Authority and, where they are not able to bring actions for breaches of the Planning and Development Act, citizens ought to have standing to be able to do so.

These recommendations are detailed through our submission, and we welcome the

opportunity to discuss them with you today. We want to make a small amendment to our submission, and that is with respect to recommendation 3(ii). We revise it to read—I will let you have a look:

> The EDO recommends the Planning and Land Authority investigate the processes with respect to DA approval timings, particularly where it is likely to impact on third party rights

as opposed to:

> EDO ACT recommends an investigation into the Planning and Land Authority …

That is the end of my opening statement.

THE CHAIR: Thank you very much, and I particularly thank you for actually providing detailed legal recommendations. You are in a unique position, being lawyers and actually understanding these things that actually have to get written. We have had quite a lot of discussion today about appeals, obviously appeals to ACAT. Your submission goes into some detail about this and calls for the expansion of appeal rights, whereas it would be fair to say that that would not be a unanimous view of people today.

Can you run us through where you think appeal rights should be expanded and why they need to be expanded? This is in the context that we have heard that basically all they are doing is making the process longer and more costly and it is leading to worse outcomes.

Ms Booker: The point that we mentioned in our submission—and we are happy to provide further submissions on this after today—goes to EIS exemption approvals. Obviously under section 2(11)(h) of the Planning and Development Act there is an opportunity for applicants to lodge an application to have the EIS exempt—be exempted from providing an EIS.

If the Planning and Land Authority decide to approve an exemption then there is no ability for third parties that have provided a submission to appeal that decision. We use this as a specific example because EIS exemptions are fairly serious. The Planning and Development Act essentially allows for exemptions for EISs for a period of five years unless there is a commonwealth approval, and then it is for the length of the commonwealth approval. We have seen in the ACT that some of these commonwealth approvals last for a period of 50 years.

In essence, that means that there is an exemption to provide an EIS for the life of the major development, which is in one example 50 years. The basis on which the authority can decide whether or not there is an exemption to provide an EIS is if the proponent has provided sufficient documents that would suggest that an EIS has been done.

However, it is not good practice in general to allow for a waiver of an EIS for a period of time that is that long, in general. Particularly with climate change, our environment is changing. You need to be able to provide regular updates on impacts of

development, particularly when developments are in stages.

Was there anything you wanted to add to that?

Ms Silbert: Yes. I think in terms of, I guess, pre-empting the concerns that might be raised about expanding rights to review, we can see in the New South Wales Land and Environment Court that there has not been a floodgates effect where they have expanded standing rights and expanded review rights, and I am happy to send through the relevant studies.

THE CHAIR: One of the things I have heard about in the ACT context is that there have been people who have been unable to appeal because they have not been able to prove a material detriment or, conversely, an association which has not had quite the right objects and, despite being very involved, cannot appeal.

I do not know what change has happened in New South Wales but what would be the issues of making material detriment easier to prove and, conversely, allowing associations that did not realise 20 years ago that they might be needing to be involved in litigation to appeal?

Ms Booker: That is the problem, isn't it? The problem is that organisations have to prove that their objects and purposes of their organisation, which they may have drafted at the constitution some time ago, did not exactly include perhaps the particular development that they would like to object to.

Our suggestion is that that requirement for material detriment actually be removed from the Planning and Development Act and that there is standing for anyone who has made a representation during the public consultation phase—I guess the proviso is that there is better sort of communication in opportunities to comment—to be able to have matters appealed in ACAT.

As Nicola mentioned, there is a study. There is an article by Andrew Macintosh, I think, that talks about the floodgates effect not actually working. And, obviously, in New South Wales they have the specific Land and Environment Court. If there is going to be a floodgates effect it would be in that court.

Ms Silbert: The material detriment requirement is something that is in a lot of Australian jurisdictions and has been recommended several times to be removed, including at the commonwealth level where they have an equivalent. The Hawke review recommended to remove that material detriment requirement. It is not a particularly radical idea that it be removed. It is quite common.

THE CHAIR: What about the concept of having a non-legal option, rather than going to ACAT, going to some sort of mediation, design review? Would that be of value, do you think?

Ms Booker: I think that would be really valuable. I know that in ACAT's processes at this point in time there is the discretion for the relevant member to require a mediation process if they think it is appropriate before a hearing. I think that is really valuable. I do not see that there would be an issue in having a mediation process. It would require

some thinking because obviously you have got 20 working days to appeal to ACAT. When would mediation come into play? When would you have that? But I think it is a good idea to avoid litigation where possible.

MS ORR: We have heard quite a bit today from people saying that consultation as early in the piece as possible is actually the ideal, but reading through your submission there is quite an emphasis on the formal process. I guess that, as lawyers, there is a reason for that.

Ms Booker: Yes.

MS ORR: Just to balance it out, I would like to get your views on the pre-DA consultation. What value do you see that adding, and what are your thoughts as to how it fits within the process?

Ms Booker: There is currently pre-DA consultation, and that is for developments of a particular size. From our experience with members of the public coming through our door, having pre-DA consultation actually involves developers not just presenting plans that they are not willing to change, but having actual, genuine consultation, which is really important. That impacts on relationships between third parties and developers at the outset. Is there a willingness to be able to discuss and for genuine concerns to be heard?

With respect to having that in the pre-DA consultation period, we are process oriented. It is really good, for those of us who can understand the Planning and Development Act—and there are not many—to be able to say, "This is the next step, and so is this." Establishing a relationship at the beginning is really important.

MS ORR: The other part that has been put to us today by a few people has been the idea of having mediation rather than going straight to an ACAT process, noting that it is a process and it has cost barriers. Would you give your views on what value a mediation process could add to the overall process and how potentially you could see it working, given that you are quite familiar with the current process?

Ms Booker: There are a lot of positive benefits of a mediation process. All parties are around the table and talking genuinely about what it is that they require and what their hopes are for a particular development. In some instances litigation is necessary. With the ACAT approach—receiving an application, assessing it for its appropriateness for mediation, engaging in that mediation process, and, if it does not work, proceeding to litigation—perhaps the way that the current process operates is sufficient.

I do not have any statistics in terms of how many matters have reached mediation and been settled in mediation in ACAT. That would be really interesting to know, and we could have a look at that. You would have to think really carefully about the timing of the mediation. There are some proponents that do not want to mediate. There are some proponents that can be quite intimidating, so it is just not appropriate.

The advantage of having ACAT in the room and seeing the parties, if they are self-represented or if they are represented by lawyers, and how appropriate it is to have mediation in that context, is important. You would need to have some sort of

independent third party overseeing whether a mediation is appropriate, given the parties and the circumstances.

MR MILLIGAN: I want to talk about mediation as well. Obviously, having regard to whatever decision is made in that mediation, if it was agreed by all parties, they would have to be totally resolute, and they could not necessarily take that matter further. If they come to an agreement in mediation but later down the track one of the parties decided to not necessarily honour what was agreed there, that would probably have to be referred to ACAT.

Ms Booker: With the terms of mediation or settlement in ACAT, if all parties understood the nature of the mediation, the outcomes of the mediation and the consequences if particular terms of mediation or settlement were not abided by, it would be really important to educate all parties on that. There is no point in having mediation if all parties, whether it be third parties or developers, do not understand about honouring the agreement that has been made. Having a mediation arise out of the ACAT process would be a safer way to ensure that all parties understood what their obligations were.

Ms Silbert: Mediation is a current step in the ACAT process.

Ms Booker: Yes, it is part of the procedural directions that they will go to mediation.

Ms Silbert: If they think it is appropriate.

Ms Booker: Yes, and ACAT aims to resolve the dispute as early as possible. So there is that opportunity in the current process.

MR MILLIGAN: At that mediation the person who is mediating that meeting is not there to give a resolution, though, are they? They are only there to work with the parties to make sure that there is a controlled discussion; they are not necessarily there to give judgement. I do not think they can, can they?

Ms Booker: That is right. Parties mediate their own outcomes and reach a binding agreement, so there would be consequences.

MS CHEYNE: I am sorry if you covered this off in responding to Ms Orr's questioning: you referred a few times to making the pre-DA discussions between ACTPLA and the applicant more transparent. What does that mean?

Ms Booker: Essentially, developers are able to, if they need to, have meetings with the authority prior to lodging. These might be meetings to discuss what the appropriate track is in which the development will be lodged. There is a range of different elements that a developer can discuss with the authority. It is outlined in the legislation but I cannot think of the provision right now.

The idea is that those discussions, and the outcome of those discussions, are made available to third parties that are interested in the development, to see the sorts of discussions that the authority has had thus far. For example, if it is about which track the development has been lodged in, third parties may have a different view about

how that has been agreed upon or how that has been come to.

Being able to see the information, the thinking through and the working through of the authority where they provide that information, or where they provide that recommendation to a developer, is really important because it gives third parties an understanding that, "This is the rationale for why this has been arrived at." It feels a little less like there have been some discussions that third parties are not privy to, and they have to then scrabble along when they are making their own recommendations on development applications et cetera.

MS CHEYNE: How would it work? Would it perhaps go up with the bundle of documents?

Ms Booker: Yes.

MS CHEYNE: Would it say whether the applicant met with ACTPLA or not? And would there be a page that said, "Here are the meetings that we had and what was discussed here," or "No, we had no meetings"?

Ms Booker: I think it would be a good idea to have the notes available. They could be available at the development application stage—the bundle. It is a little difficult. I would need to think about the appropriate timing. The reason I say that is because there is a bit of an issue in terms of the quality of information that is being provided in development applications generally. For example, if you look up on the website opportunities to comment on development applications, there are 15 documents. They do not necessarily address all of the issues and concerns that should be addressed in a development application. Sometimes information is missing; or previous evidence has been given that there has been mistaken information in a DA et cetera.

It would be useful to have something by way of not just a list or notes of a pre-DA consultation but also a list of requirements that the authority has gone through. It should not just be a "tick a box" exercise; it should be one where the authority has turned its mind to the information being provided to the third party to be able to comment on whether it is full and final. There should be a full assessment or a full suite of documents that third parties need to consider when they are providing their comments.

MS CHEYNE: I appreciate that you have many recommendations on how the website, in particular, could be more accessible and user friendly, not just recommendations but solutions.

Ms Booker: Only because I helped to develop a plain language website in the Northern Territory, so I spent a year learning about plain language accessibility and the opportunities for people to provide consultation. It was through that lens that you have received the plethora of recommendations.

MS CHEYNE: That is great.

MR PARTON: It is really worth while.

MS CHEYNE: I am not sure if you are aware, but this committee has a history of recommending that the website be given a bit of an overhaul. I think you have given us more fodder. Have you made those recommendations before to the planning directorate?

Ms Booker: No.

MR PARTON: Echoing those thoughts, it is really cool to have these ideas on specific solutions in moving forward. It may sound a little masochistic, but I actually really enjoyed reading your submission. It was wonderful.

I note that you are one of a number—just about everyone—who is recommending the proper resourcing of the planning and land authority. You also refer to Access Canberra and other authorities. When you say "proper resourcing", do you have a view of where that resourcing should end up? Are you just talking about more bums on seats? Are you talking about resourcing in terms of the sort of website stuff that we were talking about? Where do you see the shortfalls? Where do you see the holes?

Ms Booker: Resourcing on a range of levels—definitely the website—because you cannot really argue that you are giving people an opportunity to comment when it is really difficult to find. Definitely, the website needs an overhaul. Your say is not a bad example of what it could look like. Of course, we also gave the Victorian example, and we have received feedback from colleagues in Victoria that that particular website works well.

Definitely, there should be more bottoms on seats, not just in terms of the number but the expertise, and people who have the confidence to be able to process applications without fear. "Fear" is maybe a strong word, but people who are confident in their jobs. A lot of the feedback that we have received is that people will call Access Canberra and speak to a number of different people who provide different answers to questions, or that there has been such a turnover in the authority that they cannot grab hold of someone who can give them the information that they need. So there should be investment in staff who will stay, as well.

THE CHAIR: Our time, unfortunately, has expired. Thank you very much. A copy of the *Hansard* transcript will be sent to you as soon as it is available. If you have any corrections, please send them to the secretary.

KINGSLAND, MR ROSS, Red Hill Regenerators
MULVANEY, DR MICHAEL, Red Hill Regenerators
COGHLAN, MS ROBYN, Ginninderra Falls Association

THE CHAIR: On our panel this afternoon we have the Red Hill Regenerators and the Ginninderra Falls Association. I ask you all to take a glance at the pink privilege statement and confirm that you are okay with the privilege implications of it. Having acknowledged that, would any of you like to make a brief introductory statement?

Dr Mulvaney: I would like to make an introductory statement on behalf of Red Hill Regenerators. When we put a submission to your inquiry there were basically three things that we hoped your inquiry would do, which would be: lead to better notification of community groups like ours; two, recognise that it is just inappropriate for community engagement to be filtered through, basically, the paid voice of the developer; and, thirdly, we want the balance tilted towards more strategic decisions rather than continual ad hoc one-off developments.

In terms of point one, notifications, thanks to your inquiry we actually found out about an app that is available, which is just what we required. We have not used it yet, but we had a look at it. It does look like we can put in an area and we will be sent an email whenever a DA occurs in that area. That will solve a lot of the notification issues.

One point I would like to add to that is that, generally, you have at most four weeks to respond. We have a membership of 120 people. Trying to get a consensus and get it written down in that short time, particularly if we are countering information that is false and we have to go out and do our own field work, is quite difficult. More often than not the closure is close of business on a Friday afternoon. We do most of our work on weekends; so I do not know why it cannot be 10 o'clock on a Monday morning. That would make it so much easier for us.

Point two relates to speaking through, basically, a consultant's employed voice. We are finding that our views are just not being conveyed to the people making decisions. We have come to that decision because we have done freedom of information and seen the responses that come out of paid consultants. You will see one line which will basically say that the community concerns were bushfires, box gum woodland, the unviability of the golf course, street parking. There is no consideration of which were the main concerns or very little analysis. Really, our views are not being expressed or conveyed in those decisions.

The consultation that is undertaken is really designed to gain as little information from the community as they can. There is no trying to get a consensus from the community. It is consultation that is based on individuals. So you will be taken around posters. As an individual, there will be a time, three hours, where people walk through. You might express a concern. Rather than actually people writing down what that concern is, they will have points that counter your concern.

If my concern is about traffic, I am told, "We have done the traffic report." If my concern is about box gum woodland, I am told, "Actually, we have had a consultant

who found that it is exotic vegetation." They are not writing down, "No, it is not exotic vegetation; it is box gum woodland," or "These are my traffic concerns." It is actually quite poor. We think that really there should be more expertise within planning to look at community consultation and the running of those events.

They should be designed to try to get consensus. Maybe using things like residents associations and the community councils as those points would be a good way to go rather than having a conflict of interest where the developer approaches you with a development that they have set out.

The last point relates to strategic rather than ad hoc investment considerations. We have had 30 years of experience of the development assessment process. In that time we have had about 15 proposals just around Red Hill itself where there has been a change to the Territory Plan, a deconcessionalisation or a change to the lease. So if you have that many for just a small bit of land it really says, "What is the point of having a Territory Plan if every block can be subject to reconsideration? Why should the community put input into this wider strategy?"

On the other hand, we have had about 30 to 40 DAs. Generally, they have been quite small like a Telstra cable going through the reserve or some other piece of infrastructure. But when you have 30 or 40 of those over 30 years, the cumulative impact adds up. Red Hill is a bit complicated because part of Red Hill is designated land; so it comes under the commonwealth interest. But there is a disconnect in terms of consideration of those cumulative impacts.

We really want a balance that basically is put back to a strategic basis. We have had a gutful of DAs, actually. We would much rather not be involved in them. We would much rather have that argument as a strategic approach. If the government wants to think that a thousand people should be located in Deakin, let us have the discussion about where that thousand should be located or have a discussion about whether it is appropriate. We do not want to be involved in every little development that puts new people into Deakin, but at the moment we are forced to comment on those as each new development occurs.

Ms Coghlan: As stated in our submission, our interest lies in protecting the biodiversity and natural environment of the Murrumbidgee and Ginninderra gorges on the basis that these steeper slopes have been relatively undisturbed by human interference. In this context, our concerns relate to the effectiveness of DA processes in ensuring that urban expansion is carried out with due consideration for preservation of species in what has been a somewhat protected area up until now.

Further, it is relevant to consider the fact that Canberra has already dispossessed many species from a large area and that as we move into more valuable and vulnerable areas around the rivers, greater caution is needed.

The issues we wish to highlight involve the need to ensure early recognition of species that are present in a proposed development area and determine whether those species have been adequately researched so that sufficient knowledge about them is available for good decision-making, whether there is a need for further research or whether there is a need for specific measures to ensure their survival in this area.

Where inadequate facts are known about a particular species, the application of the precautionary principle should be mandatory. Policy makers invariably seek uncontested information as a basis for decision-making but this is not always possible, especially where monitoring is required over long time periods.

The premise of the precautionary principle is that activity should not be permitted where there is uncertainty regarding its effects. To achieve this, reliable outcomes will depend on the use of independent researchers without any connection to vested interests. In this context, we note that the current practice is for such reports to be commissioned by the developer. Use of independent researchers will require the creation of an independent agency to select these independent researchers and to commission studies and reports that are seen to be independent. Such an agency should be funded by developers and should be totally independent of government.

Such independent research and reports should be received by government before any DA is lodged to determine suitability of any development on the site from an environmental perspective. Doing so after development expectations have been raised is always counterproductive.

DA assessment under the impact track should be mandatory for each stage of a development where a variety of species is present, regardless of what protections have been included in the proposal. The minister's power to grant an EIS exemption for a proposal should be rigidly applied in very limited circumstances.

In respect of this situation, I would like to give you an example. The only time GFA has ever appealed a DA to ACAT related to the fact that it was in the merit track when we felt that it should be in the impact track. In the event we reluctantly reached a negotiated decision, because we felt that we had a very good chance of winning the decision. But, at the same time, we were conscious of the fact that the minister could come in over the top of that and call in the decision and we would have wasted everybody's time and effort. That might have been a cynical reaction but that is how we felt.

Further, the minister should not exercise his power to allow an exemption from providing an EIS for any stage of a development at the interface between the urban area and the natural environment. In particular, the minister should not allow a blanket exemption applicable for development that will not occur for decades into the future. Ms Booker from the EDO has addressed that particular concern.

The minister should not have the power to call in a decision that ACAT has determined was incorrectly lodged in the merit track instead of the impact track. As has been raised and discussed here today, internal processes should be established to facilitate resolution of concerns between developers and the community before resorting to legal avenues of dispute resolution.

MR PARTON: I might be a little left of field here, but I read with much interest what you have put in your submission regarding the little eagle, the action plan that was put in place there for the species and the way that it was rolled out. By the sound of it, for this particular eagle family it has not been a good result.

Ms Coghlan: No, it does not appear to be so.

MR PARTON: What would you have liked to have been done in this particular scenario? If you could roll back and change it, how would you change it?

Ms Coghlan: We were rather surprised that in the circumstances the first stage of this particular development occurred so close to the little eagle's nesting tree. Logically, we would have thought that it should have been a future stage after further research had been conducted and more definitive results obtained.

MR PARTON: What was the perimeter?

Ms Coghlan: Two hundred metres.

MR PARTON: You know for sure that this has not worked in that the nest is no longer there?

Ms Coghlan: Several of the little eagles came back last year—only one of the original pair—but no nesting occurred at that tree.

MR PARTON: I guess it is impossible to know whether nesting is occurring.

Ms Coghlan: They put a camera up on the tree.

THE CHAIR: They put a webcam there.

MR PARTON: Yes, but it is impossible to know where they have moved to?

Ms Coghlan: It is impossible to know. This is part of the trouble with monitoring these birds. Over a period of time you cannot identify or locate every single nesting pair that happens to exist.

MR PARTON: No.

Ms Coghlan: So even comparisons over time are doubtful.

MR PARTON: Please excuse my little eagle ignorance, but is it possible that they would have just moved on anyway, do they typically keep returning to the same nest, or do we even know?

Ms Coghlan: My understanding, and I am not a bird expert, is that they tend to return to the same nest over a period of years.

MS CHEYNE: Ms Coghlan, good to see you. For the record, we served on Belconnen Community Council together in executive roles.

I note in your submission you said ACAT appeals are expensive. Earlier today some of our other witnesses said it is too easy and too cheap to appeal to ACAT. What is your response to that? In your opinion what makes it expensive and prohibitive? Is it

just the expense that makes it prohibitive or are other issues at play?

Ms Coghlan: There are other issues. Basically the charge for an individual person, which was cited a little earlier as being $350, might be a prohibitive expense for some and not others. A non-profit organisation is regarded as a person so they only have to pay that amount. Obviously they do not necessarily have a huge income to fund that and usually rely on donations to cover that kind of expenditure.

The more prohibitive feature of the ACAT is the possibility that you will need to pay for legal advice, particularly if it is all very new and strange to you and you do not have the relevant experience to help you to cope with it. That is the main problem. But I can imagine property developers who are keen to get on with what they want to do feeling very peeved that these little people come along and stick a pin in their balloon.

MS CHEYNE: How can we alleviate some of these costs? Not just the barrier to entry cost but the costs associated with an appeal? Should we be trying to avoid appeals and going through things like mediation?

Ms Coghlan: I would think some process between the approval of the DA and having to appeal to ACAT, some formal process whereby the developers and the appellants and the government people could get together and try to sort out the problems.

We had an ACAT mediation last year in the case I mentioned earlier, and there was a feeling that there was not really a genuine attempt to come up with an agreeable solution. So it is hard to know how amiable or how helpful that sort of thing would be. But if it were done properly it could help each side understand better why the other side is doing what they are doing.

Mr Kingsland: I can give an example of one development where the developer seemed to genuinely want to engage with the community. You could see the end result they wanted was to have a development with community on side. They did their research early, found out what the community groups thought and listed those. They then approached us and talked to us about it. When we said we had particular problems they genuinely attempted to address those by making changes to their plans. Even though that sort of approach does not guarantee an end result, at least the majority of the community felt as though they had an opportunity to have input.

That contrasted with another development and many previous developments where you did not get the feeling the community was respected in any way. As Michael said, they gave a notice of community engagement meeting a few days before it happened. They had drawings and plans that obviously had been prepared long in advance, but they chose to advise the community out of nowhere that this was happening only days before the community engagement meeting.

The reaction they got was pretty negative, so they actually had another meeting. But even at that meeting you did not feel as though the community was being respected in terms of any objections that were raised being heard and listened to. As Michael said, what comes out in the next stage does not reflect the true nature of the quite considered and informed concerns, not just off-the-top-of-the-head objections to

anything. They were carefully considered.

We wonder whether some systems can be put in place to encourage the former approach rather than the latter—whether it is when a developer engages a consultant to do a review of ecological issues or traffic or whatever—that reflect the considered expert opinion of many people. They seem to be directed only at achieving the approval of the development.

Is there some way the developer in the future could be encouraged by the demonstration of the government's displeasure with that sort of approach to get a more accurate result, a more accurate reflection of all those issues that need to be considered, whether it is traffic, ecology or impact on other residences.

MR MILLIGAN: This is for the Red Hill Regenerators: your submission says that it is unrealistic to expect community groups to trawl through planning websites and look for signs on sides of roads and everything else to find out what new development applications are coming or are currently underway. What would you suggest? What is a better method the government could use to communicate with community groups, residents associations and the general community?

Dr Mulvaney: Through your inquiry I think we have found out that there might be a better way: ACTPLA has a phone app where you can put in the area you are interested in. As I understand it, when a DA is lodged in that area you will be sent an email to tell you. That would resolve a lot of the issue of there being 10 kilometres of Red Hill with one little sign that someone stumbles across two weeks before the thing is due. I think that would be a good way. I am a klutz and do not own a mobile phone, but some amongst our membership can handle that.

Mr Kingsland: In a situation like a development on Red Hill, a major development of 500 apartments, the Red Hill Regenerators are well known to the government and it would not be hard to engage with either our group or one of the other community groups and say, "Can you help us spread the word that this development is happening?" That would not be difficult to do. There is a network of interested community groups that would spread the word very quickly. That is another way of achieving it.

MR MILLIGAN: That currently does not happen?

Mr Kingsland: No.

MS ORR: It is interesting that you did not know about the app. A lot of effort has been put out there to make people aware how we can better connect the interested parties. If there is anything other than the app, feel free to add it.

Dr Mulvaney: I would emphasise early advice before they have actually done a plan. Come and say, "Well, what are your concerns," and design around those concerns rather than, "Here's the DA. You've got three weeks to comment. Or "Here's the Territory Plan". As a group, we have never found satisfaction through the development process because we have had those Territory Plan variations that need ministerial approval.

We have already gone down the political way of kicking up a big fuss to put our views. That has not been the way we would prefer to do it. We will leave a paper, which I would like to table, which details that better way where we were approached by the consultant. That should be the model.

THE CHAIR: We are happy to accept your paper. One of the things you mentioned was accumulative impacts of developments. You also mentioned Territory Plan variations, but that is slightly outside scope. One of the issues you brought forward was that each of those little DAs you have looked at were all fairly minor but adding them together they are major. Have you any ideas how we can deal better with cumulative impacts?

Dr Mulvaney: A bit of a change has occurred already. Early on or even five years ago our nature reserve was seen as a land bank for infrastructure. I think that is changing and it is seen as a last resort. There is more of that sort of thinking to say, "No, look, the purpose of these areas is conservation. It is not for development. You're only going to be allowed in those as a last resort". That is the planning authority telling people, "Go away. Show that you've got no other options before you come here."

There should be strategic plans that are meaningful and long lasting, whether it is the Territory Plan, a master plan, an integrated plan, whichever you do, that basically says, "This is what's going to happen on this piece of land, not just over the next two years but over a long term." We have been going 30 years, and I do not see why we cannot have a plan that basically thinks that far ahead and gives that longer term certainty. For every development that comes in, we do not know if there is going to be another one next week or another one the next week. So we have to fight every one as if it is this big avalanche we are trying to hold back, whereas we probably would have let some through if we had more confidence in the bigger picture.

THE CHAIR: You must have been involved in some of the concessionalisation DAs. Can you comment on how those are working? There is meant to be a social impact test. They are obviously quite different from a DA for a building where you have something you can see. These do not have something you can see. Do you have any comments on that?

Dr Mulvaney: Not really. All the concessionalisations we have been involved in have basically been people wanting to bulldoze box gum woodland, so that is what the argument has been based and won on. The social impact has been not an issue that has been heavily discussed.

Mr Kingsland: The experience has been that the community is the one that has suffered from deconcessionalisation, because a true value is not put on the land. The betterment tax does not cover the true value of the change in concession, and consequently the community is giving up incredibly valuable land for a minor cost. That is not just Red Hill Regenerators; that is a broader point. I wonder how long that can go on for. The government is giving away community assets. It is not recognising the true value of that land and the developers are taking windfall. I do not think that is fair or reasonable.

Dr Mulvaney: For clubs, the current deconcessionalisation, the land might be worth $40 million and there are 1,000 members. You take three zeroes off $40 million and that is $40,000 per member. Even if it is 4,000, that is a pretty good handout.

THE CHAIR: Thank you very much for your evidence. A transcript will be sent to you in the next few days. If you have any issues, please contact the secretary.

MARSHALL, MR DUNCAN, ACT Heritage Consultant
PEARSON, DR MICHAEL AO, Heritage Management Consultant

THE CHAIR: Good afternoon. Before we start, can I verify that you have seen the pink privilege statement and are happy to accept the implications of it?

Mr Marshall: Yes.

THE CHAIR: Thank you. Would either or both of you like to make a brief statement to begin with?

Mr Marshall: I will make a brief opening statement. Dr Pearson and I thank you for this opportunity. We think it is an important topic to consider. Michael and I have a lifetime of professional involvement with heritage conservation matters across several jurisdictions, both domestically and internationally. We have worked on everything from small, simple local heritage places in many parts of Australia through to world heritage. As part of our backgrounds we both at different times have been chair of the ACT Heritage Council. In that role in particular we had a very up close and personal interaction with the DA process because of the Heritage Council's role in providing advice on DAs affecting heritage matters.

The opportunity presented by these sorts of inquiries is to look for issues, problems, strengths and weaknesses, and perhaps to suggest corrections or improvements. You have our written submission. I will not labour the points made in that but, in summary, our submission raises six issues. In several cases, because we are now outside the Heritage Council and outside the loop of government information, we do not necessarily have the information needed from our point of view to form sound recommendations to address what seem to be potentially very substantial issues for heritage in the DA processes. But what we hope is that the committee process itself might be able to obtain that information, presumably from government, to analyse it and to frame meaningful recommendations if they seem worthwhile.

Those issues in that category of needing more information to inform policy are things like whether the heritage advisory service should be enhanced, resourcing of the heritage system itself to deal with major development applications, and the thorny issue of compliance with approved development applications. We hope that the committee can source relevant information and undertake the analysis necessary to form a view about those issues.

On two issues we do make recommendations, where we feel there is enough of an understanding, in order to strengthen heritage in the planning system. Those two issues both relate to legislation. One is the question of whether there should be a parallel approval for heritage in the DA system, because at the moment the Heritage Council is an advisory body and it is up to EPSDD to make the decision itself. We think that there is a strong case to strengthen the heritage voice and heritage priority in the planning and heritage system, and to provide a parallel approval to be provided by the Heritage Council.

The other issue relates to developments adjacent to heritage places. It is our

understanding that in the past the Heritage Council has been constrained in its ability to comment on developments right next door to heritage places, and that the Heritage Council does not have that ability at the moment. If, as we understand, that impediment exists, then we think that there should be a legislative fix to make sure that the Heritage Council is able to comment on adjacent developments, because of course adjacent developments can have a substantial impact on heritage places themselves.

Going slightly beyond our written submission, I noticed that in the last series of presentations you were talking about ACAT and the role of DAs through the ACAT process. I am sure that Michael has and certainly I have had long and slightly painful experiences through ACAT representing the Heritage Council. I would be willing to offer some comments about that, although I have not come along with a prepared recommendation about where that might go. Certainly in the past that has at times been a very time-consuming issue for the Heritage Council, and resource intensive for all parties, in a way that I have often felt was not a very satisfying experience from a heritage point of view.

Dr Pearson: As Duncan has said, between us we have had, I think, 13 years of experience on the Heritage Council and 10 of those, I think, as chair, having to deal with these issues on a day-to-day basis.

The core usefulness of the pre-DA discussion process is so that there is a discussion with proponents before their minds are set on the outcome. By the time you get to the DA, many proponents have already got their minds set on exactly what they see as their outcome, and having the discussion at that point is really difficult, often really, really difficult. It is much easier to have a proper discussion about values, impacts and alternatives before the DA is set in stone. So I stress that point.

The other issue is about works which are not covered by DAs, or the actual implementation of an approved DA. Certainly in the past, and I believe at the moment, there has been no consistent method of monitoring those things. There are no post-DA checks on whether the DA approval mechanisms have actually been carried out. And there are works for which a DA has not been lodged. We always suspected that there were minor works which were going on which have a heritage impact and, particularly in the heritage suburbs, a cumulative heritage impact: a little porch here, a little porch there, and suddenly you get a whole street of porches.

Those issues have been constant niggling ones, and I think the option of having some sort of regular system of monitoring study of those things would be extremely useful in giving you some firm data on whether (1) DA conditions are being complied with and (2) whether there is a substantial amount of non-DA-approved work going on.

That is just a comment to reinforce what we have already said in our paper.

THE CHAIR: That is certainly relevant not just to heritage issues. DA compliance is clearly an issue. You said that you had had 13 years between the two of you in the Heritage Council. How often were your decisions overruled? You have said you are a parallel process but you recommend rather than decide. Were your decisions upheld in general?

Mr Marshall: The impression is that, by and large, the advice of the Heritage Council was accepted and framed into a decision on the DA. But I was the chair of the council after Michael, and my impression was that there was a bit of an uptick in terms of advice not being accepted. The proportion I do not know. It would be an interesting question to ask the—

THE CHAIR: The ACT government—they probably know.

Mr Marshall: Also I guess it is a question of whether advice was not being accepted for relatively small or minor DAs or whether it was a problem in those cases where there were more major developments, bigger interests involved, where the Heritage Council's advice became less acceptable for whatever reason. Again, I do not exactly know but my impression was that it was more likely where there were bigger projects involved.

THE CHAIR: You mentioned that you had been involved with ACAT a few times. Would that have been instances where the advice of the Heritage Council was not, in the Heritage Council's view, adhered to?

Mr Marshall: One instance I can instantly recall related to a DA which was not approved by the EPSDD but where that decision was appealed and through ACAT that decision was overturned. It substantially rested on heritage matters, and ACAT decided in its wisdom that another sort of decision should be made for that development. It all revolved around the issue of the impact of that development on heritage.

Dr Pearson: I attended many ACAT hearings for the council. The vast majority of them were about appeals against decisions of government on DAs. The way they went depended largely on the expertise that ACAT called upon for a particular hearing, and that was varied.

MR MILLIGAN: Could I get a bit more clarification as to why the Heritage Council cannot comment on developments adjacent to heritage places, a bit more detail as to why it is important that you should be able to comment. Obviously, it has relevance to heritage, cultural significance and other things. Elaborate a bit more on what changes you would like to see in that space.

Dr Pearson: I can give you an example, which is an example from before the changes to the legislation. That was in the case of the Goodwin Village developments. The initial plan for the Goodwin Village was, I think, four storeys straight up from the street opposite the heritage precinct. The Heritage Council argued that a stepped and staged and broken approach would be much more sympathetic to the heritage characteristics of the precinct directly across the road from it. That advice was taken aboard and I think was implemented.

The issue is, as I understand now, that those DAs in adjacent properties are not referred to the Heritage Council, so you have to find out about them in other ways. I do not think the Heritage Council per se now has a direct role in commenting on DAs which do not actually have an impact on the property that is listed.

MR MILLIGAN: But they still could put a submission in? They still could comment?

Dr Pearson: They could probably still put an independent submission in, but again—

MR MILLIGAN: But not formally.

Dr Pearson: You still have to know about it and have the details and access to all that.

Mr Marshall: I think the staff might dig their toes in and say that it is not allowed legally for the council to get engaged.

Dr Pearson: Yes; that is what I meant.

Mr Marshall: So therefore it is not authorised expenditure of resources. I never saw the legal advice, but my understanding is that there was such advice which precluded council getting involved. It is a similar and different sort of situation to the redevelopment of the Canberra Club site on the western side of the Melbourne building, for example. Whether you like that new development or not, the Sydney and Melbourne buildings are pretty important buildings and they are right in the heart of Canberra, so development on the surrounding blocks is going to be a matter of considerable interest. I do not think we want 12 or 14 storeys to the edge of the street right opposite those buildings; otherwise you are going to end up with a very poor heritage outcome for those buildings.

Your ability to be involved in discussions about developments on those sites adjacent is, I think, an important example of where the Heritage Council could and should be playing a role.

MR PARTON: Do you think that ended up being a poor heritage outcome in terms of what we have now directly over the road?

Mr Marshall: I would have argued for a different outcome, more stepped back, with some sort of lower podium immediately opposite and then a taller development further away, from the Melbourne building at least.

MR PARTON: Because it is a fairly stark contrast now, isn't it?

Dr Pearson: Yes, it is.

Mr Marshall: Very. The thing is that you do not think that is just one development in that corner of the Melbourne building. Now imagine the two buildings surrounded by exactly that sort of development. Every other developer will probably argue, "But look at the existing development there. Why can't we do exactly the same?"

Dr Pearson: It sets a precedent and then you get the cumulative impacts going on around it. For the design process to have a stepped setback is not that difficult to achieve and it is not necessarily going to have a major impact on the commercial viability of the property. It is a matter of getting it up there early in a negotiation

process.

Mr Marshall: With the change that is happening in Canberra, I am not sure that the planning system is yet dealing very well with edge effects. I think in particular of the heritage precincts, what happens across the road from the Reid heritage precinct or the Barton heritage precinct. I am not sure that there is a recognition that we need to fudge the edge a bit or to moderate development right at the edge so that the impacts on the heritage place itself are not as great as if you just maximised development to whatever is allowed for the rest of the adjacent site.

Dr Pearson: It has become a very important process, for example, in world heritage listing in relation to the world heritage requirements for buffer zones around properties, the purpose of which is to ensure that management of a zone around a listed property is not going to diminish the values for which you listed that property. They are usually about views in and out and about overshadowing, but they are also about major changes in character that go against the grain of why you listed the property. Having a major land use change can be as damaging to an adjacent property as having a major building change.

How would that work out in Canberra? Conceivably, it might be, again, the edges of some of the residential precincts having hard-edged, four-storey commercial development circling the heritage precinct. That is a potential outcome. It is probably not now available because of zoning processes, but zonings change, as we know.

MS ORR: We are hearing again about design, and it is a theme that has come up quite a bit today. Witnesses have used the concept of design-led processes. I think that had a slightly different meaning to each person, but given that we are now back at this discussion of design, how do you see that fitting into the DA process, and can you make any recommendations for—

Dr Pearson: I would turn it around a bit. My view would be that it should be values led, not design led. Often some of the more contentious cases come about because of a strongly opinionated architect who comes up with a wonderful design. Then you start saying, "That is not going to be a good outcome for this listed property." Having a better articulation of the values for the properties and how they would potentially impact on a design solution for that property is, in my view, part of the process of having the pre-DA discussions in full before those designs are set in aspic and people's money and intellect are invested in those outcomes.

Mr Marshall: We run separate heritage consulting businesses, or Michael ran one before he wandered off to retirement, and there was a particular project where a government client had a largish site and was interested in getting some urban design for their site. Quite often in my practice, I have been—I am at the moment—the small heritage voice on the side of a larger design and development project. What I suggested to the client in that context was: why don't we reverse this power relationship? Why don't we make this a sort of heritage-led urban design process rather than letting often quite strong architects or urban design voices come in and see how they can do something incredibly creative where its relationship to heritage is not a very happy outcome.

A long time ago somebody wrote something about Canberra's planning as "forever contested". One of the comments I have made in a number of contexts is: from a heritage point of view, what is the heritage-friendly vision for development for Canberra, overall or for particular precincts, areas or sites? It is about getting ahead of the game, to project the heritage-friendly design, if you like, for whatever the context may be, before someone comes in from outside who perhaps does not have a sensitivity to the context of the environment, the values or the heritage, and starts doing bigger, unfortunate proposals which, from a heritage point of view, do not work.

It is the idea of being proactive. It links back to Michael's earlier comment about pre-DA discussions, in both the small context but also in a bigger one, with major developments. That is a gold standard that I think we should be pursuing.

MS CHEYNE: I think you have covered this a little but the theme that we have heard consistently from witnesses is that there are timing and political pressures when DAs are involved. From your perspective of what can be done to alleviate that, should we be giving a lot more time for considerations? Should it be blanket, just depending on the track and that is what you get? Or should we be really taking into consideration exactly the site and the complexity of what is proposed there?

Dr Pearson: My view certainly would be that—and again, it comes back to my perception of the value of the pre-DA discussions process—a code-based thing often does not work for heritage properties because it lacks the nuanced process of talking about values and how you can achieve successful outcomes and still keep values. It is hard to codify that. To have better up-front discussions before DAs are lodged is, I think, much more economically viable too.

If you put all your efforts into coming up with your DA design proposals and then it goes into a grinding slow-down because heritage is concerned about it, heritage gets targeted. "Heritage is holding up development. Why should heritage be able to do that?" I say, "Change it around." Before you put in your DA, if you are dealing with a property which is on the heritage register, you have to go through the process of pre-DA discussions about the design and the appropriateness of the design to the conservation of the heritage values. If you do that then the DA process is not slowed down.

MS CHEYNE: Do you think that is the reason why developers avoid doing that at the moment?

Dr Pearson: Because it is a lot easier to barge ahead.

MS CHEYNE: Is it?

Dr Pearson: Yes.

MS CHEYNE: You just said that heritage can come in and slow it right down. Is it actually easier to barge ahead?

Dr Pearson: But one of the problems is that heritage and the Heritage Council and the heritage unit become, if you like, almost soft targets for opposition. They are not big

players in the planning process. They are advising the planning authority, which is one of the reasons we have said, "Think seriously about having a more toothy role for each council to be able to approve or not approve through the planning process—not as a separate process—a proposal which is going to impact on heritage values."

Mr Marshall: I am not insensitive to the problems of timing of any process but I guess it is not just timing per se but it is timing and resources. If there are more resources available to deal with an issue—and I understand this is probably not just an issue for, if you like, the government side, the Heritage Council side but also for the community side as well—then maybe you can have the process longer or you can have it shorter. If the resources are there then people can have a meaningful engagement with it. But obviously there has to be a little time for people to be able to digest what is going on.

Just to come back to Michael's point, if there is a proactive vision, a proactive development control plan—if some of the important issues were already being solved through some part of the planning or heritage mechanism, which then enables the DA to be dealt with and for the proponent to better understand what it is that they are going to be able to undertake and therefore to design their development application to meet those requirements—then it is going to be a smoother project. Quite often people are always pushing boundaries; they want a little more, a little higher.

MR PARTON: Have you noticed that?

Mr Marshall: And I think that is just genetics. You have to recognise that that is going to happen. It is not as though the planning system or the heritage system should respond or just accept that: you have asked for more therefore we should give it.

MR PARTON: Can I say that I think it is wonderful to have two individuals here who have such qualifications but also such experience in dealing with exactly what we are talking about here. I want to take you back, Dr Pearson, to your opening statement. I guess the question is a really broad one. I think you made a statement about the community consultation process that really struck at the heart of what we are discussing.

Although you did not quite say this I think you alluded to it. There are proponents who see community consultation as just an impediment to their design outcome and that is all it is. It is just an impediment. From the vibe of your statement, in a perfect world you would like to see proponents seeing community consultation as a way to enhance and improve the development. Is that really ever going to be possible?

Dr Pearson: One can live in hope. The community is part of it and the formal heritage process is another part of it. But I think the two often are very closely interconnected. Often when we appear at ACAT also appearing are community groups with exactly the same issues. There is a close connection between trying to protect heritage values and the community's valuing of their place, the place they live.

I would also say that it is not just developers—there are different types of developers—and one of the more tenacious developers is in fact the government itself. As I was leaving the Heritage Council, coming to grips with the planning implications

of the arts precinct at Kingston was a question: what is driving this? Is this a heritage precinct which is going to be used for arts purposes or is it an arts precinct which happens to have a few heritage things stuck in the middle of it? At times you got the view that the latter was in fact what was driving government because it saw bonuses in arts but not necessarily bonuses in heritage.

It was extremely difficult to achieve outcomes like a view out of the powerhouse to the lake. That took a lot of negotiations with the planning authority and with the developers of the buildings between Kingston and the lake. And the outcome was sort of all right but it was not what you, in your bravest dreams, hope for.

Government is not free of its own problems in balancing heritage and community views in its role as a developer. Similar things, from my point of view, also occurred at the Yarralumla brickworks. It becomes very problematic to deal with it.

MR PARTON: In that opening statement you spoke about DAs where there was, at whichever point of the process we are talking about—and I guess we are really talking very early on in the process—a genuine attempt from the proponent to basically go to the community and say, "We have got this broad idea. What do you guys think of it?", rather than, "This is what we are doing and do not talk to us."

Dr Pearson: To some extent I can also see a developer's perspective on that—

MR PARTON: Definitely.

Dr Pearson: And the government perspective on that because it does encourage the NIMBY process—not in my backyard, thank you very much; and having a process which sorts through real concerns and associations with community and real heritage values and making sure that that is clearly articulated and it is not simply being seen as supporting a backlash.

MR PARTON: Sometimes you almost get the feeling that it inspires this ambit claim-style DA process where we start off here in the belief that we can end up here, and everyone has won.

Mr Marshall: One of the coded things in our submission, which perhaps is worth being more explicit about—and we talked in our submission about resourcing for heritage at a couple of points—and one of the things worth stressing, and it relates very much to the point you are making, is that at times the ACT community, meaning the people in the suburbs and beyond as well as government as well as developers, seems to have a very poor understanding of what heritage is and means and what is the proper role for heritage within the planning process.

If there is a greater capacity to raise the heritage literacy amongst all those groups, including and perhaps especially within government, then I think the discussion generally can be much improved. To the extent that community and community groups feel that there is a heritage issue and want to express concern about that heritage issue and if they have a good understanding of what the Heritage Council thinks and means and how it operates in the heritage system and its advice through the planning system, then I guess the community contributions to that discussion,

although they may disagree with the Heritage Council but if they fully understand or better understand the Heritage Council's role or the standards and processes being applied, will mean that maybe the conversation can be a more focused, sharper, more meaningful conversation without a lot of litigation.

MR MILLIGAN: Just on the involvement of the Heritage Council with the pre-development application or even the development application and if the Heritage Council is going to be included on all of them going forward, currently, as I understand, there is no legislative requirement for the Heritage Council to make a decision on a particular application. Is that correct?

Mr Marshall: They have a statutory role in providing advice.

MR MILLIGAN: No time frame is provided, though?

Mr Marshall: I am a bit fuzzy on the exact details but the whole process has time frames, and the Heritage Council has to operate very quickly. In fact, a lot of the work of the Heritage Council on DAs is actually delegated to the ACT heritage unit, the staff of the ACT heritage unit, because the time frames are quite short. It is only when there are thorny issues that the council or councillors become engaged, because there is not a happy pathway through for heritage in those circumstances.

MR MILLIGAN: And that is where I think there is that time frame issue then, though, where there is no set time frame for a decision to be made.

Mr Marshall: No. The time frames still apply but it becomes more difficult because the council normally meets every two months or something of that sort and there are DA task forces, if they still have them, which I am pretty sure they do, which operate in between. They are called together as needed, or things are done through an email ballet. Yes, it puts more pressure on the heritage system to respond. The bigger or more complex the issues, then it really becomes quite a difficult thing, especially if there has not been those pre-DA discussions or the necessary studies undertaken to inform or to contextualise the advice the Heritage Council might make.

MR MILLIGAN: Obviously you would understand that developers would be cautious about working with the Heritage Council because they are cautious about a delay, and obviously delays cost money. Time is money.

Mr Marshall: In my experience the engaged, thoughtful developers who bring in good expertise to help them—there may still be disputes and disagreements—are minimising the risk. They are going to get a much better outcome.

The problems in the past that I have experienced arose when a developer came in with a development which was clearly not acceptable, for a variety of reasons, where they were employing less than good expertise or no expertise at all to help them, and there had been no pre-DA discussion. In those circumstances it becomes a very difficult circumstance, but the developer has made a difficult path for themselves, which is going to mean an unhappy outcome for everyone probably.

THE CHAIR: Gentlemen, thank you very much for attending this afternoon. This is,

in fact, the conclusion of the committee's proceedings for today. I thank you very much for attending. The proof transcript will be sent to you within a few days. If you have any issues with it, send it back to our secretary. Thank you very much. The hearing for today is adjourned.

The committee adjourned at 4.46 pm.