**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**

**THURSDAY, 13 SEPTEMBER 2018**

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

**By authority of the Legislative Assembly for the Australian Capital Territory**

## WITNESSES

## Privilege statement

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*Amended 20 May 2013*

**The committee met at 11.05 am.**

**STANTON, MR ROBIN**, Combined Community Councils ACT
**FORREST, MS ANNE**, Inner South Canberra Community Council
**FATSEAS, MS MAREA**, Inner South Canberra Community Council
**DOYLE, MS JULIE**, Campbell Community Association Inc
**CARRICK, MS FIONA**, Woden Valley Community Council

**THE CHAIR**: As we have most of the panel here, we will start. Welcome, everybody, to this public hearing of the Standing Committee on Planning and Urban Renewal inquiry into engagement with the development application process in the ACT.

Today we are hearing from a panel of community council groups, resident and community associations, a number of individuals with specific interests in the DA process, and Minister Gentleman and directorate officials. Before I start, I will go through the normal housekeeping: proceedings are being recorded by Hansard for transcription but are also being webstreamed live. There is a pink privilege statement in front of you. Can you confirm for the record that you understand the privilege implications of the statement?

**Ms Doyle**: Yes.

**Ms Forrest**: Is that all we need to say?

**THE CHAIR**: "Yes" was the magic word. I imagine that before we go to questions you may have opening statements, which would be great. But please be reasonably brief. Maybe we will start with Robin, if he has one, and we will work along. In a logical order we will start at one end and work along. Over to you, Mr Stanton.

**Mr Stanton**: I would like to make a brief opening statement, and I can provide this to you in writing if you would like. Thank you for the opportunity to present. We would like to add our voice, "our" being CCC, to the widespread concern that the relationship between the community and the ACT planning system is breaking, if not broken. Engagement with the DA process is particularly damaging from this perspective. It need not be that way. A great deal can be done to improve the system.

Arresting the decline in trust is as urgent as it is strategic. Improving consistency, knowledge, evidence of listening, if you like, and transparency are critical to improving trust. For this purpose, experience in the councils of the DA engagement process reveals rich veins of actions just waiting, really, to be mined. And our submission has got a whole list of different concerns in it from that perspective.

Just consider very briefly the master planning process, consultation and merit track. Master planning is really important. Focusing on the long term, when taking short-term decisions, is indispensable for consistency as well as for the injecting of wisdom of communities into our future. Master planning is as important as it is foundational. However, plans need be translated into firm constraints on short-term developments. Precinct codes, the first step in translation, are also the first step in the battle to put master planning strength into the Territory Plan.

Trust would be boosted considerably if the provision for community facilities and spaces was a required inclusion. Precinct codes for the Mawson and Woden centres are immediate examples. There are many others. Trust would also be greatly strengthened by the criteria for breaking the rules in the Territory Plan being far less permissive. It is too often a question of imagination in the DA process to argue that criteria are met even though they frustrate long-term objectives.

On consultation, requiring developers to consult is very sensible. However, the DA process should not rely on developers' reports of the consultation, leaving community views until DA evaluation time. It is not fair really on developers, for that matter, to ask that they report on community views that are opposed to their commercial interests, as they often are. Rather, the process should involve receiving community views earlier so that discussions between government and developers are informed. The public simply does not have access to government in any way comparable to developer access. Consultation by developers is often simply a selling event, with little subsequent evidence of listening having occurred and even less evidence of change as a consequence of the consultation.

Considering merit track, that is far too permissive. Currently it allows decisions based on very narrow judgements by relatively few people. That conflicts of interest abound in this area is not surprising. No doubt it is a difficult problem. However, communities should be provided with detailed, reasoned accounts of decisions, as well as the deliberations behind them. This does not happen at present. This is a fundamental aspect of transparency and openness and it is an urgent problem if the corrosion of trust in the current system is to be reversed.

Communities embrace planning. Planning is our friend; it is the principal means by which community values can become operational. Our experience is that longer term, informed plans are too often sidelined in favour of short-term commercial interests, and the planning process falls into disrepute. The DA engagement process is the main public theatre for improving trust, and our CCC submission lists concerns leading to that conclusion at a much more detailed level.

**Ms Forrest**: I am here with Marea Fatseas, who has a statement for the Inner South Canberra Community Council. I have a supplementary note, which I would like to hand to the committee, which specifically deals with development applications in heritage precincts.

**THE CHAIR**: You have got something you want to table?

**Ms Forrest**: I have got five copies.

**THE CHAIR**: Thank you very much. Do you have a statement you wish to make as well, or should we move to Ms Fatseas?

**Ms Forrest**: It is all contained in the supplementary note. That may prompt some questions later that involve heritage. I am happy to wait until that point, if that suits the committee.

**THE CHAIR**: That is fine.

**Ms Fatseas**: Thank you for the opportunity to appear before the committee. The Inner South Canberra Community Council, as you may be aware, is the peak body for residents' groups in inner south Canberra. We regard the development application process as crucial for Canberra's future as the nation's capital and welcome the opportunity to make some recommendations that, if implemented, we think will help improve the planning process in the ACT.

We recognise that the issues under consideration are complex and cover the spectrum of developments, from major developments like the redevelopment of former public housing precincts in Red Hill, Griffith, and Narrabundah right down to home renovations. The stakeholders include the neighbours affected by any development; the government, which controls the process and develops the planning policy; the developers who undertake the building work; and the broader community that has to live with the consequences of poor development on the streetscapes and on other amenity.

What we are after is good outcomes for the future planning of Canberra and for enhancing the built and natural environment, and that is at the heart of what we are seeking. We want buildings that do not leak and that provide good access to sunlight. We want energy efficient buildings that will contribute to the government's target of zero net emissions and we want space for the urban forest to prosper and green space for recreation.

We know there are major problems at the moment. There was an article in March 2018 in the *Canberra Times* which indicated that even in the first nine months of last financial year there was a 40 per cent increase in complaints about building and planning issues to Access Canberra. That was just in the first nine months. I have not seen the figures for the total financial year. So we know there is a major problem.

Within that context, our key recommendations are: with respect to better governance, we consider that all compliance responsibilities associated with planning and development should reside in the Environment, Planning and Sustainable Development Directorate and the compliance responsibility should be appropriately staffed so that irregularities can be acted on promptly. We really need a professional and well-resourced planning authority.

The current process for appealing decisions would be improved if an independent body examined contentious cases. Consideration should be given to re-establishing the role of the commissioner of land and planning. This role was independent of the planning body, and senior planners rotated through the office.

I think both residents and residents' groups and also industry would appreciate not having to go to ACAT, because ACAT is very expensive for the industry but it is also very time-consuming and incredibly resource intensive for residents who have to face off against barristers often in ACAT. I think there could be win-wins there for residents' groups and for industry if we actually sorted out the problems before they got to ACAT.

We consider that development applications for all knock-down rebuilds should be mandatory and publicly available. Until that happens, we think random audits should be undertaken of certifiers' assessments that proposals are exempt. Penalties should be increased to a significant level for a certifier's non-compliance with relevant acts and codes. There should be public reporting of a certifier who has been found to have incorrectly assessed the exempt status of a development proposal.

We think that some additional categories should be added to the pre-DA community consultation list, including block amalgamations, development affecting a property listed or provisionally listed on the ACT heritage register and all merit track applications. We think that retrospective DAs should only be approved in exceptional circumstances and that DAs should at least meet, and hopefully exceed, the quantitative rules in the development codes. There must be tree and verge protection actions articulated in the DA and monitored during the building process. Even down the road in my street this morning trees on one side of the street were protected and then there were building materials and no fences on the trees on the other side of the street. It was a corner block.

All development applications and the decisions made on them by EPSDD must be made readily available on the government website and there must be some accountability by naming the officer making the decision and the reasons for the decision. Anne Forrest has already presented a statement on DAs in heritage precincts and can elaborate on that in discussion.

**Ms Doyle**: I am a retired member of the Royal Institution of Chartered Surveyors, a Fellow of the Australian Property Institute and I worked in the ACT private and public property sector for over 30 years. I am a core member of the Campbell Community Association.

Thank you for giving the CCA the opportunity to speak in support of our submission on the DA process. CCA was incorporated earlier this year in response to the very high level of frustration, stress and distress being experienced by residents regarding their concerns being unheard and unaddressed, particularly in relation to the volume and scale of medium density development in the RZ2 zone, which is drastically changing the suburb.

Of the 60 submissions to this inquiry, 10 were in support of the CCA submission. No doubt you have become aware of the distressing dichotomy between industry views and those of ACT residents who are on the receiving end of current planning decisions. This schism reinforces the urgent imperative for a robust planning authority to ensure that sound decisions are made, based on the relevant legislation.

There is a strong perception that development is developer centric and residents' views are merely obstructive and without value. Public consultations could be described as cursory and tokenism, with a sense that decisions have already been made.

There is no intention to be anti-development or adversarial, but there are grave concerns that the ACT government's DA process is producing residential developments which do not comply with the zone objectives for RZ1, RZ2 and the

parking code for residential zones. This is borne out by the apparent lack of consideration of the items highlighted in the attachment here.

**THE CHAIR**: The secretary would be delighted to get your attachment.

**Ms Doyle**: The requirements for good redevelopment and controls already exist in the Planning and Development Act in the Territory Plan 2008 and can be implemented immediately. DAs appear to be approved as if they are occurring in isolation or in greenfield areas. Approvals are granted to construct the maximum number of permitted dwellings on RZ2 blocks solely on block size and regardless of code objectives, community consultation and effects on neighbours such as privacy and overshadowing.

Extensive inner suburban infill and densification have created public safety risks, with unsustainable, aged and inadequate infrastructure and services. These include narrow streets, lack of footpaths, poor street lighting and stormwater provision. There is a high volume of total site clearance, particularly in RZ2 zones, to accommodate multiple units and concrete parking.

Climate change and other experts in EPSDD should have responsibility and overriding power to impose conditions to ensure development is sustainable and that living infrastructure is retained wherever possible.

During construction periods there are inadequate or no measures to manage public risk and safety due to illegal parking, traffic volumes and calming, encroachment on verges, use of public areas, as well as compliance with the Environment Protection Act 1997.

The DA process is a user-unfriendly and impenetrable maze, often requiring scrutiny of 30 or more documents. A holistic, simpler and streamlined approach is required which would cut costs for the government. In the past five to 10 years suburban residents' groups have been formed, many in response to poor, unsustainable and inappropriate development in their suburbs.

Questions arise as to whether statistics are kept of the number of multi-unit developments being approved in suburbs which were designed as primarily single residential areas. Builders are able to use legal loopholes to increase plot ratios by claiming new dwellings will be for adaptable housing, with a resultant increase in the number of units permitted onsite.

Assessing DAs is a technical process requiring appropriate expertise prior to DA approval. The ACT government should provide access to neutral advisers in relevant professions to help Canberra residents navigate the DA process and to read building plans.

The appeal process to ACAT is expensive, daunting and potentially high risk for private individuals. Residents are having to engage lawyers, architects, engineers, town planners and heritage consultants at considerable personal and financial expense to obtain information which should be mandatory and audited by the ACT as part of the DA process. A further deterrent under subsection (2)(d) of section 48 of the

ACT Civil and Administrative Tribunal Act 2008 provides that if an application review under the Planning Act is struck out or dismissed the tribunal can order the applicant to pay the reasonable legal costs of the other party.

In Campbell by the end of 2019 there will be over 950 new medium density dwellings occupied in C5 and on Constitution Avenue, together with a Defence Housing Australia development, petrol station redevelopments and multiple RZ2 developments. The population will shortly increase by some 2,500 residents. Campbell is unique in being surrounded by designated land under the control of the National Capital Authority, and it has no master plan. Extremely complex and bizarre planning and development approval processes involve the federal and ACT planning authorities, which have separate responsibilities for DA release variations and construction works approval. Communication between the two federal and territory authorities is, at best, minimal.

None of this is for the faint-hearted. Many Canberra residents have neither faith nor confidence in the current DA process, which has become unworkable. It is time for proactive, not reactive, action by the ACT to restore the residents' trust in its planning processes, to ensure suburban and environmental amenity is retained throughout the ACT. Much of this can be achieved by compliance with the ACT's existing planning and DA processes as well as a desire to mitigate the situation through genuine consultative and open processes.

**THE CHAIR**: The overwhelming message that I have from all of you is that you have to put a lot of effort into interaction with the DA processes and that there is a lot of knowledge required for that. Ms Doyle, you had a few comments on this, but what do you think is needed to make the process work better from your side of the fence? Is there any support that you need? Is there a way it could be simplified?

**Ms Forrest**: Speaking particularly to the heritage areas and DAs in those areas, you may see from the supplementary note that DAs in heritage precincts are run in the minor merit track, which simply means that the immediate neighbours may receive a letter giving them a DA number and they have to go onto a separate area of the ACTPLA website to access those documents.

They have no right of appeal and the process of assessing those DAs is quite fraught because the proponent can seek advice from the heritage unit and then can ignore that advice and put in the DA. The DA may be approved without the heritage unit ever being reinvolved in that process. That is minor merit track in a heritage area.

It has become apparent that the asbestos blocks in heritage areas are being treated as building applications, which further removes the process from any scrutiny at all and involves a private certifier. I did hear the two heritage experts suggest a parallel level of assessment—both the heritage unit and staff and ACTPLA—at the same time so that the DA is being scrutinised by both those areas of government and the final approval is ticked off by both parties. That is specifically in heritage DAs, but that sort of minor merit track issue arises in all the RZ1 zones. No-one has any right of appeal to any DAs in the RZ1 zones.

**Ms Fatseas**: I think what Anne has pointed out about the independent certifiers—and

that is why I mentioned them in my opening statement—is that we have got so many problems and so many complaints about knock-down rebuilds where the neighbours do not even know what is being proposed. We used to have building inspectors.

The responsibility of government is: if it does not have the resources to do a job and it outsources it, it cannot just wipe its hands of making sure that the objectives are being met when it outsources. If you outsource you have responsibility as a government to make sure that the objectives are being achieved. I think that is what is not happening. I think the government has outsourced it to these independent certifiers and they are not making sure that the purposes for which that system was set up are being achieved. We would not have to do this job if the government was doing its job.

If the government cannot manage an outsourced system then we are suggesting with knock-down rebuilds it be brought back into government and the government has responsibility and that there be a requirement for development applications for all those.

The fact that complaints have gone up 40 per cent shows that something is really wrong about the way the system is. And we should not, as volunteers, have to come in and try to clean up the system because either the planning authority is not adequately resourced to do its job or the government has abrogated its responsibility to ensure that a function that it has outsourced is actually achieving the objectives for which it was set up.

**MS ORR**: Ms Fatseas, you said complaints are up 40 per cent. Can you clarify for me which complaints?

**Ms Fatseas**: I am reading from an article on 24 March 2018 in the *Canberra Times* with the heading "Access Canberra complaints about building and planning increase by 40 per cent." It then goes on to say—bearing in mind it was in March:

> For the past nine months the ACT government has received an average of 20 complaints each week regarding building and planning problems in the territory.
>
> With three months remaining in the financial year, the numbers already represent a 40 per cent increase on last year's figures.
>
> Since July 1, 2017 there have been 728 complaints made to Access Canberra in relation to building and planning issues, compared with 525 in 2016-17 and 513 in 2015-16.

That means they are on an upward trend. That shows to me a failing system.

**MS ORR**: That was Access Canberra. That is not planning, it is not ACTPLA.

**Ms Fatseas**: But that is because the responsibility for following up about complaints about planning and building issues has been taken out of the planning authority and centralised into Access Canberra.

**MS ORR**: I appreciate that. I am just trying to figure out if this is applying to DAs or

if this is further down the process.

**Ms Fatseas**: It does not specify.

**THE CHAIR**: That is a question that you could ask this afternoon of Minister Gentleman, I think, Ms Orr.

**Ms Doyle**: Can I say something?

**THE CHAIR**: Yes. I was going to say that I totally hear your issues about the single knockdown rebuild—and that is an issue—but in the instances where you can make complaints, where there is a role, do you feel that you are in a position to involve yourself in the process appropriately or is it that there is not enough information, too much work, you do not have the expertise? I do not want to put words into your mouth, but that is the sort of thing I am wondering if you have got any comments on.

**Ms Doyle**: A lot of the documentation that is provided is shoddy, I think you could say. It is very difficult to read. Planning reports get recycled and you can see that the suburb names and block and section numbers are being repeated over and over. That just says that it is a tick and flick thing as far as people are concerned. But responding to things—you do it but you think it just goes off into the morass where nobody takes any notice. The thought of ACAT, having done it once historically with the RSL building on the corner of Constitution Avenue and Blamey Crescent—it was an interminable process and it did have some good results, but it is daunting. We are everyday people; we are not lawyers.

**THE CHAIR**: I would like to welcome Ms Carrick. I draw your attention to the pink privilege statement.

**Ms Carrick**: Thank you, chair. I have read that before.

**THE CHAIR**: The other witnesses were given a chance to make a brief opening statement. If you would like to, we extend that invitation to you as well.

**Ms Carrick**: Thank you. I think I will just say that we have some very large developments in Woden, with multi-high-rise residential towers with upward of 800 apartments per DA. So those proposals are very complex and they are very difficult for the community and for those impacted, where they are elderly, to be able to understand and to make effective comments on them.

It is also unclear what precinct code the DA will be assessed against. We have one currently where the precinct code goes in and out of interim effect. Interim effect may be applied one month—say, 16 December—and then it is not. There is no interim effect. Then the interim effect is back on again and then it is off again.

Our experience to date has been that DAs are assessed under the precinct code in force when the DA is lodged. But with the more recent one, the proponent prepared the statement against the criteria, against the DA in force when the DA was lodged. However, it is being assessed against a different precinct code. So we cannot assess the proposal against the precinct code that the DA is being assessed against because

the DA provided a statement against the criteria of a different precinct code. It is all very confusing and we would like that to be sorted out.

**MS ORR**: We have had one day of hearings already. We have had a range of witnesses—community, industry, professionals. Everyone has come with different and contrasting views. That is not to say that any one is any less or more valid, but they are all quite different. However, my question to you is this: given that you are aware of some of those views, based on the comments you have already made, where does the balance lie?

**Ms Fatseas**: In terms of the ACAT, I think everybody is having problems with it. It is just too difficult. It just takes too much time and effort for the community. We do not normally have access to lawyers. We do not have the kind of money that industry does to appoint lawyers and barristers. Often we might be able to find some lawyer who is able to do it on a pro bono basis. Otherwise, we have to use our own resources.

I think the balance there would be to try to fix up the problems before they get to ACAT. There used to be an independent planning commissioner or something. I will ask Anne to explain how that worked. If you have someone like that who is independent and who can actually take the DAs where there is a lot of contention in terms of complaints, if you can have an independent party that has a sort of planning background but who is in this independent role of commissioner of land and planning, then hopefully they can address it before it can get to ACAT. But I will throw over to Anne to explain how it worked before.

**Ms Forrest**: It was during the time that it was planning and land management, before ACTPLA. There was a commissioner for land and planning who reviewed DAs, based on a number of objections. It was not single dwellings and my recollection is that it was not dual occupancies either; so it was all the larger developments, including, I think, commercial. It was a separate unit. It acted independently to planning and land management.

Senior officers who were in the assessment area rotated through it, so they gained a lot of experience reviewing these decisions. Then, the commissioner, who happened to be John McInerney, signed off on a very detailed statement either approving or not approving the DA, or maybe suggesting amendments. That then became the decision. In my experience, because that was so carefully thought through and was open to scrutiny by all parties, including the public, the ACAT—it was AAT then—was used really as a last resort. I think that that was a very good way of reviewing decisions when there is a lot of concern within the community or within other commercial interests.

**MS ORR**: Going to the balance, I think the appeals are one aspect of the question, but I was speaking quite broadly in that respect. We have heard from a number of industry groups that they felt that sometimes the process got wound up in a policy debate, when their belief was that the policy debate had been had, that the process should be able to run through. Again, this is their opinion, just so that we are all on the same page.

Other views were that vexatious claims were sometimes made that were not

necessarily fair or reasonable. Again, I am just trying to say that there are two sides, because you are obviously here to represent yourselves. How do we better balance the fact that we do have two quite different perspectives? We do need to bring them together; that is the point of a planning system. But I would say that from your side we have heard some pretty critical comments about the other side. How do we start to bring everyone together so that we can actually have a positive planning system?

**Ms Fatseas**: I have seen the media coverage about some of the industry concerns and calling for more exempt developments and kind of freeing it up more. I guess that when you ask for something like that, you really have to have community confidence that what is going to happen is actually going to be better than what we have got now.

But if you have got exponential increases in complaints, it means that that industry organisation and its members have really got to do a bit of a job themselves about their members to try to ensure that, if they are saying to us, "We will self-regulate," the stats speak for themselves. The complaints are going up. I think there is a bit of a job to be done by industry to try to pick up its game. If they can do that, of course, the community will be more sympathetic, because we do not want to spend all our time complaining about developments either.

**Ms Carrick**: I would say that the pre-DA consultation guidelines that were supposed to initiate the conversations and bring the community along on the journey for their developments are not always working. Sometimes the developer is not in good faith having a discussion with the community and will not come to the meetings and just simply will not talk to them.

**MS ORR**: Yes, on that, what would demonstrate good faith on behalf of the developer?

**Ms Carrick**: Coming to a public meeting prior to the period for the submissions closing. We have found that one of them came once after the submissions had closed. It is allowing questions, allowing people to sit down in a room together and ask questions, because we find that we have this divide and conquer. There will be A-frames around; you will individually go around so the community does not have an opportunity to sit down and discuss it.

**MR PARTON**: In your submission you spoke a bit about the WOVA.

**Ms Carrick**: The WOVA has been a very big problem for us.

**MR PARTON**: It was interesting to read this, because it is exactly what you are talking about. As you have presented it here, there was not an opportunity for people to actually sit, listen and ask questions at the same time. The way you have described it, people were just herded through, shown some pictures, and then shown the door.

**Ms Carrick**: What happened was they would not come to a Woden Valley Community Council public meeting but they went to Bellerive. They had this A-frame thing at the Hellenic Club too. But at Bellerive all those elderly people went into a room. They had the A-frames. They had their own frames themselves and they could not get around. So there was this outcry that the Bellerive community, which was

being impacted by this development, was not allowed to sit down and talk to the developer about it. In the end they were forced to bring chairs in to let the community sit down. My parents live there. They said to me that I could have a question at the end. I was allowed one question. So they shut down the conversation.

**MR PARTON**: But there were questions from residents.

**Ms Carrick**: Yes, they did have questions from the residents.

**MR PARTON**: Were they restricted to one question or—

**Ms Carrick**: Pretty much; they give tight time frames. They do not facilitate a conversation. That Bellerive community would bring up an issue. Then it would just be dismissed and, you know, move on. There is not really discussion in good faith about it.

**MR PARTON**: And the biggest issue, I imagine, based on my conversations, was the overshadowing.

**Ms Carrick**: Yes, and the scale of it because it was a 24-storey wall opposite, on the other side of the road. But in addition to the Bellerive community, it is a very big development; it impacts on the rest of the community as well. The rest of the community were not provided with the opportunity to sit down and talk about it.

They did come after submissions had closed and just ran through their proposal. Then they put in an amended proposal. They did not let anybody know; so we did not know about the amended proposal. When we asked if they would come and talk to us about that, they declined. Submissions closed on the date that we had a public meeting and we talked about it ourselves. We brought it up, but it was all too late.

**MR PARTON**: With respect to Geocon, who are not here to defend themselves obviously, is it your perception that they are viewing community consultation as just a potential impediment to what they are doing, rather than an enhancement?

**Ms Carrick**: My view is that they do it in a fashion that is divide and conquer. They will have telephone surveys. They will ring up and ask, "Do you want mixed use development?" People will say, "Oh, yes." But you do not know what you are getting. They will then say on their website—I cannot remember what the figure was; I am just making it up, but it was a large one—"Seventy per cent of people want mixed use development. Therefore, they agree with this development." People did not know what the development was when they said they were happy to have mixed use.

**MR PARTON**: It must be said, though, that those who think the development is a pretty cool idea are not likely to arc up. They are just going to look at it and say, "Yes, that looks cool." You are not necessarily going to hear from the people who think that the development is well and truly within the scale that they want and that it is an enhancement for the town centre of Woden, are you?

**Ms Carrick**: No, that is right, but that is probably the case for all developments. It is only those that say, "There is an issue with overshadowing here." It is those people

who will pipe up and say so.

**MR PARTON**: Yes.

**Ms Carrick**: Then in the amended DA we do not know really what the changes mean because we understand that the facade has changed to be a concrete wall with windows. So we just do not know.

**MS ORR**: Mr Stanton seems to have something he wants to add.

**Mr Stanton**: Part of the way in which we think about moving the balance is first to recognise that it is really not on individual projects unless they are evaluated inside a plan of community views that anticipates the future in various ways. If that is strengthened then you get part of the answer to that.

I do not think for a minute that, from my experience, there is any requirement on developers to give back to the community evidence that they have heard. That is the first thing. What has happened? Has there been consultation? You cannot get to that. And the standard question is, "What did you change from the beginning, due to your community output?" What if you do not get anything back? They are more selling opportunities.

I am not sure that it is fair on them to report back something that is not in their interest. They will try and drive around to meet their commercial interest, and that is all right. I think that is all right. I think that part of the answer is to strengthen the rules from the planning operation, which has, at least in the master planning process and stuff, engaged the community views on a kind of large scale. Sure, things can change in the short term that still meet long-term objectives, but frankly what happens at the moment is that short-term objectives are met that are deleterious to their longer term objectives.

To respond to how we shift the balance a bit, or a lot, I would focus on the merit track provisions, the fact that the criteria are there. "They are the rules, yes, but you need not worry about the rules." It takes imagination not to argue for most of the criteria that are set out there. Then the community is faced with engaging on the way in which criteria are met or not met. That debate, that argument, is open, of course, to influence and conflict of interest and public debate, right up to the political level. To the extent that we can minimise that, I think we do change the balance.

What we see in the merit track with criteria is a lack, too, of decisions being made in ways that let the community see that judicial levels of consideration and deliberation have taken place. For example, just last year there was communication from the director of the planning directorate that said, "As we see through the public notification process, there has also been a significant level of community feedback which aligns with our independent assessment of the proposal against the requirements of the Territory Plan."

Here is a community—in this particular case I think the chair knows about it—where there were nearly 500 submissions, there were petitions and so on and yet apparently there was an independent evaluation in the government not made available to the

community that would have rejected it anyway.

If I go to the business about the huge amount of work the community has put in to find that it is finessed in various ways and dismissed and there is no feedback about it—it is a hard problem—if we focus on the way in which rules do not mean a lot to developments, they all go, of course, to the criteria. It takes imagination not to meet criteria in various ways, and that distances the strategic objectives.

**MR PARTON**: They imagine things differently to you, I think.

**Mr Stanton**: Anyway, that is my experience.

**MR PARTON**: When you say it gets down to imagination, I am saying that the developers' imagination is different to yours.

**Mr Stanton**: That is fine. I do not prioritise one over the other as much as to say, "Where does all the work come; how do you rebalance it a little?" The focus is on the way in which merit works. There is no definition of merit that you can appeal, apart from benefit. To whom? Not clear. That is a very big area of arbitrary amounts of work put onto communities.

**Ms Fatseas**: I would like to just draw on something that Robin mentioned in his introductory statement, which is that you can bring more balance to it if you actually bring it up to a more strategic level. Have the discussion between government and industry, and the community at a precinct level. Have the conversation about how people want their suburb to look in the future, because people have their own views.

A lot of them might want to have opportunities to downsize as well, but at least involve them at the beginning in the conversation and have that conversation with industry and whatever at that precinct level, which the government promised to do in response to the inquiry that you chaired, Caroline, in response to draft variation 306 to the Territory Plan back in 2013.

The government, as I mentioned on Monday night at the forum, undertook to undertake community engagement on the character statements for the precinct codes, and five years later it has not happened. If you actually had that conversation happening at that strategic level, the precinct or suburb level, then you would get everybody in the room, you would have it all out there and then I do not think you would get as many problems at the DA level.

**Ms Forrest**: Prior to 2002, just responding to your challenge about how to improve this process, there was a government initiative of local planning committees which met on a very regular basis. All developers of multi-unit developments, commercial developments et cetera, were required by legislation to appear in front of those planning committees. The committee, with public input, had to be given time to respond and then the proponent had to show how they had responded to the concerns being expressed when they submitted their development application.

It took a long time to build up that process, but once it was in place it was a very open, transparent and honest process, in my belief, and it would be very interesting to know

statistically just how many appeals processes arose after that careful scrutiny over a period.

**Ms Doyle**: There is a considerable problem, obviously, that the property industry is dollar driven and has never been any different and they frequently put up proposals which are beyond what is permitted under the code and so forth. Then, if absolutely forced to, they reduce things. But the public and the property industry are miles apart. And to call people vexatious litigants, sorry, is a misunderstanding of what the term means when one person is objecting to a monolith.

**MR PARTON**: It is not vexatious for them, is it?

**Ms Doyle**: But "vexatious" implies that you go on and on and on forever and ever and ever and it is not just standing up and standing up for something that may be a better result.

**Ms Forrest**: And it may be that in regard to vexatious litigants, which I have heard mentioned in relation to this committee—statistically, again, ACAT would be able to prove or disprove this—it is other commercial interests that are causing some of these very long cases against—

**MS ORR**: I can think of at least one example of it.

**THE CHAIR**: We all know that one.

**Ms Forrest**: I think "vexatious" was being used more loosely than it should have been and the ACAT statistics would again reveal what the real picture is.

**MR MILLIGAN**: Just to change the direction a little from the line of questioning that we have had so far, we have heard from a number of submitters their concern about navigating through and understanding the development application online and the resources and the material that are there. We recognise too that you are all volunteers and it takes time and also that you are not all city planners or architects or builders yourselves.

I am just interested to know: if there was such a thing as a summary that was provided for every development application that pretty much gave an outline as to what the development application was about, what exact information would you like to see in that summary that you think is crucial and important to understanding what is going on?

**Ms Carrick**: I do find that, when I look at particularly commercial developments, sometimes I spend quite a lot of time trying to work out exactly what it is that the development is doing. To have a clear description of what the development is, what the objective of it is and what the benefits of it are, if we could have that in half a page or a page, then that might help move on and save some time.

**MR PARTON**: In one place?

**Ms Carrick**: Yes, in one place, on one page.

**MR MILLIGAN**: And be obviously linked to additional information that is easy to navigate?

**Ms Carrick**: Yes, because you have got the actual application itself and perhaps in there a better description of what the proposal is could be fleshed out and what it is seeking to achieve, the objectives, because sometimes, particularly with those commercial ones around retail shops, I am just like, "I don't know what this is doing, this DA."

**MR MILLIGAN**: I guess the question is: with this summary, then, would you have faith and trust in the developer to properly summarise their development application and disclose all the relevant information and not try to withhold information that could be controversial in the community?

**Ms Doyle**: If it was properly scrutinised within the ACT, yes, you would, but there is no confidence at the moment.

**Mr Stanton**: I think a list, too, which is good, of the rules that have been broken in order to put a development forward would help. Once you escape the rules, it is a permissive world with very few constraints, and engaging with that is quite hard for us. When the government has independent assessments that are negative but we do not know that, that also seems like it could come in. If the government can do preliminary work as well as some summary of the kind you were referring to, Mr Milligan, I think that would be very good.

**Ms Forrest**: And I would like to see a form which has a hierarchy within that form. It would start, in my view, with heritage, because that is the highest protected and upheld, beside the Territory Plan, then the zoning of the particular proposal and what is allowed under the Territory Plan under that zoning, which is what you are referring to there, Robin, and then, after that, all the particulars of the application—the simple ones, footprint, height, open space, mixed use, all those sorts of things—so that that is all out there, available on the web through some sort of reference to ACTPLA and being supplied by the developer.

**Ms Fatseas**: And I was going to add to that: the things that people, the neighbours, get most upset about are things like the impact of the building next door on their access to sunlight. That is a really big issue that people are concerned about, because it is not only about amenity but it is also about increasing their energy costs. There is a financial impact on them—not only the one about the wellbeing aspect.

There is the impact on their private open space, whether they are going to be able to enjoy their backyard, whatever size that is, or whether the people next door can look into that private open space. I guess setbacks are another issue—whether they are going to have an enormous monster right next door as well. I guess there is an issue of footprint as well. I think people get very upset if they think that every bit of vegetation is going to be destroyed and they end up with a monster next door with paving around and no kind of vegetation at all.

**MR MILLIGAN**: It could be, in a sense, quite a practical measure to put in place that

would help the community?

**MS ORR**: Marea, I take your point that vegetation is much nicer than concrete; I think we do agree on that. But I also acknowledge that some other people prefer concrete over vegetation. In their own residence, where would we draw the line in them having a choice? I am playing devil's advocate on this question.

**Ms Fatseas**: We can look at how other states are doing it. I think in Victoria they acknowledge that, responding to climate change and things like that, they have a requirement, depending on the size of the block, that 35 to 40 per cent or something has to be plantable area. We are the bush capital. Why shouldn't we have requirements for the plantable area? We know scientifically that in summer there is a difference of about five or six degrees in the temperature of a suburb that has lots of vegetation compared to suburbs that have hardly any vegetation. We know the scientific evidence is there about the amenities of mental and physical wellbeing.

We should not be afraid to have requirements for planning. That is what governments are for: so that we do not have the tragedy of the commons. Everybody likes to move into a leafy suburb. If they go and build on the whole block, and everybody is doing that, where do you get the commons? That is what I thought government was there for: to actually look after the community interest.

**Ms Doyle**: The ACT's living infrastructure information paper from February endorses those comments.

**MR PARTON**: Julie, you have seen in Campbell, in particular, a hell of a lot of trees go by the wayside as a consequence of some developments in that RZ2. Do you want to tell us a bit more about that?

**Ms Doyle**: The RZ2 development everywhere in Canberra suddenly happened; it just exploded. What is happening is that people are putting in this adaptable housing thing which gives them the ability to put in another unit, put in a one-metre empty space for a lift for future use. A lot of them are just very nice townhouses. The requirement for parking means they have built what we call quarries to put in underground parking, but there is onsite parking, and the street trees all go, either accidentally or just by having stuff put around them. The whole block is cleared to put in these townhouses.

**MR PARTON**: How would you be changing the provisions around adaptable housing? You do not believe that that is actually fulfilling—

**Ms Doyle**: No. I think adaptable housing is great if it is being properly done, but you could have two dwellings in RZ1 quite easily in a lot of places, and two in RZ2 would be okay, but not four or five.

**MS ORR**: I think it is reasonable to say, though, that a lot of this conversation will fall into planning policy, as opposed to the process.

**MR PARTON**: Agreed, yes.

**Ms Doyle**: Yes.

**MS ORR**: The question I was trying to get to was about the process. If your neighbour is doing something that is within the rules, whether you like the rules or not—that is a separate conversation, and I am not trying to take away from that discussion—then, again playing devil's advocate, why can't they do what is within the rules?

**Ms Fatseas**: There is a question with knockdown rebuilds about whether you even know if they are meeting the rules. There are some existing rules about the percentage of plantable area. How would the neighbour be able to even know if the building going up next door to them is complying with that?

**MS ORR**: Marea, am I right in understanding, relating back to the process, that the argument you are putting forward is that for knockdown rebuilds—which largely, in my understanding, fall within "exempt", so would not require a DA—there is a view that you are progressing that knockdown rebuilds should have a DA so that there can be community comment?

**Ms Fatseas**: Yes.

**MS ORR**: That is what we are coming back to.

**Ms Forrest**: And then there is the added complication of amendments to development applications which may be beyond the scrutiny of the public and, in the case of heritage, beyond the scrutiny of the heritage unit. And there is the issue of compliance with what was, in fact, approved. Again, the next-door neighbours can often lose out because of amendments and because of compliance issues. It is very difficult to get, through Access Canberra, anyone to respond to those, even in time to review them.

**MR PARTON**: Let's talk about certifiers. A number of your submissions cover that certification process. Marea, you have suggested that penalties should be increased to a significant level for a certifier's non-compliance. You have suggested that there should be public reporting of a certifier who has been found to have incorrectly assessed the exempt status of a development proposal. Robin, in your submission you say that building certifiers should be held accountable by the government. I have heard other suggestions that we should just trash that whole scenario and swing it back into the arms of government or at least—this is from you, Robin:

> … a thorough cost analysis … to determine whether it would be less expensive for the Government to revert to full Government inspection of all developments (at developer expense) and to do away with private certification.

Robin, that is yours. Talk us through how you would see that working.

**Mr Stanton**: Could I make a leading comment. The Combined Community Councils is just that: a voluntary organisation from the other community councils. The in-house submission is an amalgam. There is commonality across everything. I make that comment because you can get chapter and verse on many of the issues here from chairs of the councils.

You asked the right question of me: how does it work? I think the motivations come from trying to control the downsides rather than seeing a much better upside in terms of efficiency and so on. Along with many other areas—like consultants' reports on X where the consultant is working to a developer—there are a range of issues that crop up under that general heading. The public relies on the independence of judgements in those areas, particularly certifications. Relying on that independence is being tested: can we really rely on that when you have these different problems cropping up?

Let us go back to imagining that they are appointed independently, perhaps by the government or through an agency. To the extent that that is really inefficient there are other sorts of problems that are not anticipated by the submission. You asked me how it would work. There is the obvious way of registry and regulatory control.

**MR PARTON**: Could it be the silver bullet? Could it that if it were addressed in one of the ways that you have been suggesting, many of these problems would actually be fixed?

**Mr Stanton**: I can think of many that would not because they do not involve a certifier. It is the question about what kind of structure is being proposed and so on. There is a layer where I think that is true, but it is by no means all the things we have been talking about, which is the interface, the engagement with the process.

To me, one gets driven by whether we believe in planning, whether we believe that there is wisdom in the community that really helps us realise the futures we want. You might find arguments that if we can make commercial gain out of it, that is somehow a reflection of what we should be doing. But from the community point of view there is wisdom in the community. It is getting it out reasonably, in a reasonable fashion, into a set of rules which are broken only exceptionally. There is an argument that in some cases it might stifle certain kinds of innovation or whatever, but I think making that exceptional is the larger part of what we have been talking about here.

I cannot take it further than that, I am afraid. Basically, the certifiers get paid by the developer, and insofar as the certifier is making judgements, they are in that situation.

**Ms Fatseas**: I would like to add to that that if the government were to appoint the independent certifier, perhaps having a panel, and then the industry funds this whole process, it takes away the requirement for the independent certifier to give the developer what they want. At the moment, the piper calls the tune. If the independent certifier is getting paid by the developer then if they want to get future work it is going to be difficult if they stand up against what the person who is paying them wants.

Similarly, a lot of people who have knockdown rebuilds done may not even know that it is their right to appoint an independent certifier. They might just assume that it is the builder who appoints the independent certifier. There is a lot of lack of knowledge about people's right to appoint their own independent certifier.

What if it were taken away, as in a lot of other things? Even ASIC now is telling companies that they have to pay a certain amount every year to help fund ASIC's enhanced regulatory functions. I have received a letter like that. I am a director of a

company, so I received a letter saying that because ASIC have these new functions they are going to charge different companies a certain amount. That is going to pay for the regulation of the industry.

If ASIC can do it, why not have something like that where you apply a charge? Then it means that the certifiers can really be independent. If the government decides that it does not want to take it back in house, at least that is something that the community might have more confidence in than the current scenario.

**Ms Forrest**: Further to these comments, some time ago the New South Wales planning authority was proposing to introduce a step whereby, if an independent certifier was used to tick off on development, the final step had to be back with a government certifier, and vice versa. If it was the government certifier operating, the final approval was from an independent certifier. I do not know the status of that presently, but that is an interim step from taking it all the way back in house.

Robin has made a very good point. The certification is one part of a very complex problem and may well solve some of the issues. But at the end of the day, for very significant developments—Woden is a perfect example of that—it is a matter of very open and honest communication and bringing the community right into the fold with the developer so that everybody begins to share their views and some sort of compromise position is reached. It would be wonderful to think that everybody ended up with a win-win.

About 18 months ago, there were two or three people here from Vancouver talking specifically about how to consult with the community. Their development in Vancouver is called UniverCity. It is very detailed; there is a lot of information online. They were very inspiring to listen to. They see a very important, significant role for community to be part of the development application process.

**MS ORR**: That goes back to another theme that we have seen emerging from this: a preference for consultation and engagement early in the piece, front-loaded. Is there anything that anyone would like to say specifically on that? We have heard it quite considerably.

**Ms Fatseas**: Certainly we have asked for the pre-DA consultation to be extended to block amalgamations, development affecting a property listed on the heritage register, and all merit track applications. But I could highlight a recent one. We do not know how it will go, but the Molonglo Group are planning a big development at Dairy Road.

**MR PARTON**: Massive.

**Ms Fatseas**: They have had a whole month of events. They have invited people to go. They invited the Inner South Canberra Community Council to do a walk around. It builds more trust if people are getting involved at an early stage. It is like, "Okay. We haven't got anything locked up yet. We are just seeking your views at this early stage." I think there is a lot more goodwill when it is done that way.

**THE CHAIR**: How can we get more people involved at an early stage? From my observation over the years, people tend to get more interested in something as it

becomes more real and is next to them. I hear what you say, but how do we do it?

**Ms Fatseas**: Look at what the Molonglo Group are doing at the moment with Dairy Road. They have had a whole range of activities so that people can interact with them and give their views. I have done a walk-around. I do not know exactly what proposal they have at the moment. There are examples of the way people are doing it. Ginninderry has had a long process of getting people involved.

**MR PARTON**: With those two examples, though—and it is interesting because I thought the same way—Ginninderry, and what Molonglo Group want to do at Dairy Road, there are no actual neighbours living there, and that is probably the difference. It is one of the differences.

**Ms Fatseas**: Except that, if you look at Red Hill, with the public housing precinct, there was a whole process around the government working with the residents in that area. I was also involved in the community panel for the brickworks development. It will be interesting to see how that goes because they are different models, and it is early days in seeing how that pans out in both cases. I understand that, with the Red Hill process, there were not any appeals subsequently in response to the DA or the draft variation. I think there are models out there that we can look at.

**Ms Forrest**: I was involved with the Red Hill proposal for the public housing precinct around the Red Hill shops. In fact I was involved twice, because during the period that that local planning committees existed the government at the time went out to community consultation using the LPC process with a very significant proposal. That all got shelved when government changed; so it has all been repeated.

I cannot identify the name of the particular unit, but a unit, through the planning authority or maybe through the Land Development Agency, finally took control of the last steps in that community consultation, and it was very wide ranging and very extensive. It pulled in people of all age groups, including the public housing tenants, who, of course, were all going to have to be rehoused. To date it appears to have been very successful. The Red Hill association was formed in response to that, and they are still active. They kept their community well and truly involved. But there was an enormous commitment on the part of a whole lot of people, as well as the particular unit that took over the final consultation process.

**THE CHAIR**: Very briefly, as we do not have a lot of time left, a number of submissions have mentioned retrospective DAs and that there are problems with them. What are your views about them? What could be done to improve them or shouldn't they happen?

**Ms Forrest**: Haven't you had that? You mentioned that WOVA had changed its plan?

**Ms Fatseas**: No, that was an amended DA.

**THE CHAIR**: No, that was not a retrospective. That was amended. Retrospective is where something is being built and either there was no DA put in or the DA that was put in was for something other than what has been built; so you build it and then get to the DA.

**Ms Fatseas**: We are recommending that only very rarely, only in exceptional circumstances, should retrospective DAs be approved. We have had cases—and the one in Landsborough Street might have been an example of this—where it already exceeded what the rules were. After the approval, it then built a wall that was even higher than that. If you end up having a situation where someone does something that they know is outside the rules and then they think, "There'll be no consequences; we'll just go and get a retrospective approval,' you completely undermine your planning system.

**Ms Forrest**: Should there not be penalties for that?

**THE CHAIR**: What do you think? Should there be?

**Ms Fatseas**: If a building goes up prior to the DA when they know that it is outside the rules, there should be a penalty for doing that, because that is then a disincentive for other people to do it. You need to have incentives and disincentives in place.

**Ms Forrest**: I think it is in the act. It may be in the Territory Plan but I think it is in the act; there is an ability to apply for retrospective approval which cannot be challenged. As people are pointing out, it sets a precedent and it then enables others to do the same thing, and there is a rolling effect to all of that. I think there should be very serious penalties, and once those penalties are out there and applied to some people who are prepared to test them initially, quite clearly others will desist. So it is a matter of taking that first big step.

**THE CHAIR**: Would those penalties be financial? Would people be fined or would the building be partially demolished?

**Ms Fatseas**: That wall should have been partially demolished; no question.

**Ms Forrest**: Yes.

**MR MILLIGAN**: I will go back to my earlier question in relation to the DA and understanding the documentation that is presented. Ms Doyle, you spoke about having neutral advisers in relevant professions to provide help to residents to navigate through the whole process. Can you explain what you mean by that and how that would actually work?

**Ms Doyle**: We were looking at a DA yesterday. There were 30-odd documents that I knew how to look at but a lot of people would have no clue at all. Within ACTPLA there should be people with engineering and architecture skills and so forth, to help people who have queries. Everything is online. If you want printed stuff, you have to pay for it. Plans are difficult to read, and there need to be people on hand who can explain some of the technicalities or what the effect might be on the adjoining owners.

**MR MILLIGAN**: Is that not available already, so that you can ring up and get some advice?

**Ms Doyle**: Up to a point.

**MR MILLIGAN**: Up to a point?

**Ms Doyle**: With a big development—I am looking at one on Constitution Avenue at the moment which is messy—trying to get the right information is very difficult.

**Ms Carrick**: In my view, if you want to reduce the complaints about DAs, the underpinning planning that supports the precinct needs to be stronger and agreed by the community. Where the precinct code or the plan for the precinct does not really deliver the built form that the community would like or the public spaces that the community like, or protect the environment in a way that the community would like, you are inevitably going to have complaints about the DAs when they come in.

For example, with the Woden town square, because it allows 16 to 28 storeys for Woden the whole way through, it is not about having mixed building heights at all. Therefore, when a DA comes in that will seek to put 28 storeys on the northern perimeter of the town square itself, we will complain; so we are set up for this already.

**MR PARTON**: I think I am looking at your submission, Fiona. Bearing in mind that we do not have a great deal of time, this is a pretty simple question: your submission refers to apparent serious under-resourcing in the EPSDD, leading to superficial consideration of DAs. Is there a general belief from the panel that much of this is an under-resourcing issue?

**Ms Carrick**: Yes.

**Ms Doyle**: Yes.

**THE CHAIR**: I suppose Hansard should record nods.

**Mr Stanton**: Resourcing, no doubt, but the end point of the resourcing is a system that is qualitatively different from the one we have. I think I would take both. Planning is really important. We have to make sure that we can fund proper planning and the translation of that planning into the precinct codes and so on.

As I tried to say in my opening statement, if we do not include community spaces and facilities as part of what goes into precinct codes, developers do not have to relate to them. They say, "We don't have to." But if they are included, it does not put an impost on developers that they would not take on board, because it would be in the code. Strengthening the rules by making, in a sense, the criteria much more deliberative with respect to breaking the rules for good reasons would be what I would say is a central end point of better resourcing. That is what is needed.

**Ms Fatseas**: You have to have the right policy framework, the right governance framework, the underpinning regulatory framework and the resourcing to back it all up.

**Ms Forrest**: Behind all of this and what has just been said is a step back, which is master planning, particularly for large town areas et cetera and big development

proposals. There needs to be a system of master planning that is nuanced and professional and does include community input long before development applications are put into train, and, for instance, for Woden, sets the framework for an outstanding future for the shopping area.

I did hear people from the development side of the community saying, "If there's a 27-floor height limit and people object when the DA goes in for 27, we shouldn't have to deal with that." I agree with them. The problem is—assuming that is all correct—that the master planning either did not occur or has not included the community. People have no understanding that, in fact, 27 floors of building are going to happen; it has all been approved.

**MR PARTON**: You make a really interesting point—and I know it was suggested on this side of the table—that we are drifting into areas that are outside what it is that we are examining. But it is impossible sometimes to separate them, isn't it?

**Ms Forrest**: It is.

**Ms Carrick**: Yes.

**MR PARTON**: When you are considering outcomes, unfortunately, it does get down to that big picture.

**Ms Forrest**: Yes. There is a step back, which requires funding, professionalism and inclusive community input prior to this DA process, which may, in fact, solve a lot of the problems.

**Ms Carrick**: And there is an urgency.

**Ms Forrest**: There is an urgency. It is our city.

**THE CHAIR**: Absolutely. Thank you very much to all members of the panel for attending today. A transcript will be sent to you when it is available. If you have any issues with the transcript, please contact the secretary. Thank you very much. We will take a break until 1.30.

**Hearing suspended from 12.28 to 1.32 pm.**

**KOUPARITSAS, MR STEVEN**
**KOUPARITSAS, MRS MELINDA**

**THE CHAIR**: Good afternoon and thank you for attending this afternoon's hearing of the Standing Committee on Planning and Urban Renewal inquiry into DAs. I draw your attention to the pink privilege statement. Can you confirm that you understand the privilege implications of the statement?

**Mr Kouparitsas**: Yes, we do.

**Mrs Kouparitsas**: Yes, we do.

**THE CHAIR**: Thank you. Before we ask questions, do you have a brief statement?

**Mr Kouparitsas**: Yes, we do. I will commence reading our statement that Melinda and I have prepared. Thank you for the opportunity to address you today. My wife Melinda and I have detailed our issues in our submission to you and would like to take this opportunity to highlight our key messages. Our issue relates to the construction of our neighbour's 2.1-metre high concrete pool structure, which is a major contravention of the single dwelling housing code, as detailed in our submission.

We first outlined the issues to Access Canberra as it was being constructed two years ago. The construction of the non-compliant structure should have been halted at that point. However, the current processes in place—the DAs, retrospective DAs and certification—are woefully inadequate. The ACT government do nothing and let neighbours duke it out. They are quick to refer a complaint to ACAT, which is not, in fact, an available avenue for single dwelling constructions.

In summary, our key messages are: first, what is being built is not necessarily what has been approved by the certifier through the DA process. The ACT government let the build proceed no matter what, even when it is clear that it is not in accordance with approved plans or the building code. Builders are taking advantage of poor regulation and a timid approach of Access Canberra as it appears that there are no compliance checks at any point.

We also note, after reading other submissions to this inquiry, that we are not the only people whose neighbours have built a two-metre high pool structure. We would like to refer the committee to the submission by Ms Jen Walton.

Our second point is that in relation to the certification, there is no accountability as the owner pays the builder, who then in turn pays the certifier, which is a major conflict of interest. We feel it creates a closed loop. We were not permitted access to the certifier, plans or approval documentation even though there were clear breaches involved which directly impacted us.

It is important to note that the building code is applicable to pools where they are not exempt. Pools are then subject to height restrictions, as would be a house. Certifiers do not appear to know this. If they are not checking the compliance at all, what are

they actually paid to do? I will hand over to Melinda.

**Mrs Kouparitsas**: Next to dealing with a conflicted certifier, timeliness has perhaps been our greatest frustration. Once it was established that the structure was not, in fact, exempt, we had to wait two years for the owners to submit a retrospective DA, which only happened because we went to the Ombudsman. We have then been waiting another 100 days since we lodged an objection to the DA. We understood the legislated time frames on decisions to DAs was actually 45 days.

Do we actually need to go back to the Ombudsman a second time to make the government do their job? We would like to know how long this will continue as the structure is still not approved, although a missing approval does not appear to stop them using the structure.

In conclusion, we believe that allowing the building code to be breached through a conflicted certifier completely undermines any regulation that you believe exists. The DA process is being treated as a joke by builders and certifiers. Even if they do have to lodge a DA, they simply build whatever they want knowing that Access Canberra will not make them knock it down.

Perhaps if Access Canberra were to better enforce compliance with DAs and the building code, the builders and certifiers might act more responsibly. We thank you for your time and would like to take this opportunity to answer any questions you may have.

**THE CHAIR**: We thank you for your time. You have a litany of issues. Is there one thing that you would see as the single most important failure in this or can you not get it down to one most important failure?

**Mr Kouparitsas**: I think that early on when it was pretty clear to us that the build was not in accordance with what, at that time, was our limited knowledge of the building code, Access Canberra did not take that opportunity to come to see for themselves.

**THE CHAIR**: You contacted Access—

**Mr Kouparitsas**: We contacted them and they did not physically come and take a look. We were then directed by Access Canberra to the certifier. The certifier would not take any calls from us and directed us back to the owner. It is very stressful when a member of the public has to do that policing on their neighbour and you have to live next door to this person. That does not create a good neighbourly atmosphere, I can tell you.

The failing is: who is checking the certifier, chair? I mean, if you have to identify something as the single most critical failing, if the certifier was doing their job and somebody was independently checking that the certifier was actually abiding by the building code, then that would have been the most important thing.

Access Canberra should have jumped at the opportunity to come and take a look before it got too far. We have now been told, effectively, that the concept of the neighbours removing the structure is—

**Mrs Kouparitsas**: Disproportional.

**Mr Kouparitsas**: Disproportional to our complaint.

**THE CHAIR**: Have they said what sort of remedy there is likely to be possible? I mean, do they see the outcome?

**Mr Kouparitsas**: When we saw the DA, the DA was woefully inadequate in terms of those mitigations.

**Mrs Kouparitsas**: The DA was about half a page long. Now that we have put an objection in to it, it is obviously stalled, because it has been 100 days and no decision has been made.

**MS ORR**: Can I clarify something? Initially there was no DA; it was exempt from a DA. The DA you are referring to is the retrospective DA.

**Mrs Kouparitsas**: They said it was—correct.

**Mr Kouparitsas**: Correct, yes.

**Mrs Kouparitsas**: The certifier said it was exempt. Given that it is 2.1 metres high, it is not actually exempt. It does not meet, I think it is, the one-metre high rule. They were forced by Access Canberra to go back and get a retrospective DA, which was lodged after two years of our going to the Ombudsman. They said they were giving them due process but two years is ridiculous to say that that is due process.

**MS ORR**: Just to clarify, with the retrospective DA, were you given an opportunity to comment?

**Mr Kouparitsas**: Yes.

**Mrs Kouparitsas**: Yes.

**Mr Kouparitsas**: And we are still waiting on the response back.

**MS ORR**: Has the retrospective DA been approved or not approved?

**Mrs Kouparitsas**: No

**Mr Kouparitsas**: No.

**MS ORR**: It is under consideration?

**Mr Kouparitsas**: It is still under consideration, yes.

**THE CHAIR**: Thank you very much. We unfortunately have a really tight time frame, and this is—

**MS ORR**: Can I ask one more quick question? If it had not been an exempt DA, do you think the issues that have arisen would have been picked up in an initial DA process?

**Mrs Kouparitsas**: Absolutely. It is two metres high and it is a pool deck. It is actually an unscreened element: a second storey, because it is so high, unscreened element. It is like a balcony. They would not be allowed to build that at all facing our house. Balconies have to face the front of the street. If there is a balcony that looks basically over their neighbours' house, they are not allowed to build it. So we believe, absolutely, that it would not have been allowed to be built.

**THE CHAIR**: Thank you. We very much appreciate your contribution. The *Hansard* transcript will be sent to you when it is done. If there are any errors, please let the secretary know.

**Mrs Kouparitsas**: Thank you. We hope that this inquiry makes some real change. That is why we came today.

**THE CHAIR**: Sorry, I obviously misinterpreted—

**MR MILLIGAN**: Timings?

**THE CHAIR**: Yes. I saw 1.00 as 1.40. We will continue.

**MR PARTON**: I want to ask what I think is a really important question, and you alluded to it earlier. I want to know how this whole saga has affected the relationship that you have with your neighbours and, as a consequence, and I know it sounds like a really broad question, how this saga has affected your life.

**Mr Kouparitsas**: That is not a broad question at all. That is the crux of a real problem: that our neighbours see us as the ones policing this problem and they blame us. This is the whole crux of the issue. You were asking me about the single biggest failing. Well, this is the consequence of that failing. The consequence is that it is back on us to point it out to them. It should not be back on us. It should be back on the certifier to be policing them to prevent them from having had something like that built in the first place.

They see us as having called them out when we have done nothing wrong, and that has created immense tension. That is the point around what we say about duking it out. We basically had to point out to the government and to our neighbours that there is a noncompliant structure, and they resent that. It was very tense for a long time. We have now reached an amicable point where I had to stand in my driveway and tell my neighbour that it was not my fault, that it was in fact their fault for letting something noncompliant be built, and that we should move on and be amicable but that we were going to be commenting on the DA and—

**Mrs Kouparitsas**: It was after much tension. There has been aggression. There have been rude signs in front of our children. There has been all sorts of aggro aimed at us because we are the ones having to do the policing. We initially approached the neighbours. We did not go to anyone else. I went to them and said, "Wow, that's

really high. Can you tell us what you're going to do?" We tried to have an amicable conversation. I said to them, "Are you going to put clear pool glass on that or is it going to be opaque? How are we going to stop the privacy problems here?" And they said, "We're doing nothing." So we said, "Okay, well it doesn't seem fair that you can build something that is clearly illegal," whether or not it was an accident by their builders. We believe their builders knew.

So then we had to go to Access Canberra. But Access Canberra have treated us like the criminals too. We ring them and they say basically, "You're the buttinskis. You're the ones that are causing the problem here." We are the ones that have to live with the noise. We are the ones that have to live with neighbours peering into our bedroom windows. We have spent a fortune on our house as well. And now we get letters back that say knocking it down would be a disproportional response. Our having to live with it is a disproportional response as well.

**Mr Kouparitsas**: I think that is a very good question you asked. It has been a very big stress on Melinda and me. That is probably one of the main reasons why we had to come here today, as well as for change so that other people do not go through this. That is why we referred to another submission we read, which Melinda sent to me last week, before we came here. We saw another person who is going through a similar problem to the one we had. We saw the email exchange. It was very similar. I do not know if you have seen that. When we read it, we could relate.

**MS CHEYNE**: Why it is now more amicable between you and your neighbours?

**Mr Kouparitsas**: Because you want to live and you have got young children and—

**Mrs Kouparitsas**: We just asked them to stop screaming at us and to stop sticking their fingers up at us. I think they got a bit of a shock when we just asked them politely to cut it out. Our children are in the same class at school.

**Mr Kouparitsas**: The why is because we had to move on. We made it very clear to them that when they finally completed their DA we would still be making a response to that DA. Life has to go on but at the same time the whole thing about it being disproportionate—well, what about what we have invested? The fact is that we have built a house that is compliant, and our house is relatively new as well.

**MR PARTON**: You would hope that if everyone could go back to the starting point we would do it differently based on what the outcomes have been.

**Mr Kouparitsas**: Yes. That is whole point about Access Canberra having had the opportunity, whilst this concrete was being laid, to come out and halt works, to say, "Hey, this thing is actually not approved." But everything we got from them was that it was approved. In fact the house was approved but the swimming pool was not. That is why. I think both your questions are key questions.

**MS ORR**: I am not sure I am clear. Was the swimming pool within regulation in the proposal and built differently, or was it never within?

**Mrs Kouparitsas**: It was built differently. The surveying on the house assumed a

sloped block. They were trying to build a house two storeys at the front and two storeys at the back, so it is effectively a three-storey house but meets the code because it is only two storeys at any one point. It assumed a sloped block. The block is not sloped at all. We have got a completely flat house. So when they built it—

**Mr Kouparitsas**: Well, it is not as sloped as they thought it was. And, by the owners' own admission, the surveying problem with the house actually created the house in the middle section a metre higher than it should be.

**Mrs Kouparitsas**: It starts two metres off the ground, the second storey in the middle.

**Mr Kouparitsas**: The pool is a metre higher—

**Mrs Kouparitsas**: The pool is 2.1 metres high. It was supposed to be in-ground.

**Mr Kouparitsas**: Semi-in-ground. To answer your question, it is a myth. We understand the pool to be a metre higher than what had been planned for in the original plan.

**MS ORR**: And this is down to the surveyors report arguably not being accurate? I will say arguably, because we have not seen it.

**Mrs Kouparitsas**: Yes, that is what the neighbours told us.

**Mr Kouparitsas**: We never got that. We never got altered plans or anything. We only got that as it was conveyed to us from the owners, on at least two or three occasions when they told us that.

**THE CHAIR**: Thank you very much. Now we really have run out of time.

**CULLY, MS RUTH,** private citizen

**THE CHAIR**: Thank you very much for attending this hearing of the Planning and Urban Renewal Committee's hearing into DAs. First, can I draw your attention to the pink privilege statement and can you please say for the record that you understand its implications?

**Ms Cully**: I confirm that I understand its implications.

**THE CHAIR**: I understand you have a brief opening statement.

**Ms Cully**: Yes. First of all thank you, Madam Chair and members of the committee, for inviting me to give evidence. Before taking questions, I would like to present some slides so that you have a better picture of—

**THE CHAIR**: You may have to present the slides after some of the questions.

**Ms Cully**: All right.

**THE CHAIR**: We are working on it.

**Ms Cully**: Without the slides, I do have these. They can be handed out in the interim.

**THE CHAIR**: Yes, certainly.

**Ms Cully**: I was going to actually use the slides to demonstrate this. This goes to the issue of the inaccurate, incomplete documentation supporting the DA and in particular the repeated nature of the false or misleading information that was provided.

I will just go through this page. There were claims about the window—this is on the left hand column—and these claims were provided in response to the first notification period and repeated in response to the second notification. The point that I am making here is that at the first iteration it was clear that the DA was inaccurate.

When I first became aware of the proposed development next door and I looked at the documentation, it was clear that it was inaccurate and incomplete and I attempted to draw this to the attention of the assessment officer. When that was not successful I engaged a town planner who also unsuccessfully tried to seek some intervention.

Finally, after the end of the first notification period, the senior officer responsible for the area did renotify. This was a two-stage process: the first, notification and submissions; the second, notification, with some amended documentation and submissions. In response to the submissions the applicant has the opportunity to respond.

In this document that I have just given you—the three rows—the window that is impacted is less than three metres off the boundary, which is considered less than reasonable to expect protection. In fact, all three north-facing windows were impacted and the impacted windows are at least three metres off the boundary.

The second claim was that accurate modelling demonstrates that on the shortest day of the year the window is impacted between 2 and 3 pm and in shadow until sunset. The actual photographs, which I would like to show you, demonstrate that on the—

**THE CHAIR**: I think you probably can now.

**Ms Cully**: I am a little out of order here because what I wanted to do was first of all show you this. This is actually Google View. This is the original house. My home is behind the bushes there on the right and this is another property on the left.

I will go back. There is another one there. This is typical of the homes that are in the street. Most homes are two-level with either a single or double garage below, living areas above. The development from the front—this photograph was taken earlier this week—involved extending out the back, out the side and out the front. Work started over 12 months ago.

When I talk about the parapets, it is these structures here. You can see there are two levels. The development involves building two levels that are higher than the existing top level. As I say, all the other homes in the street, as far as I am aware, are only two levels. It is these structures, the parapets, that actually cause the big shading issues to my dwelling. As you can see, the roof itself, on the section, is that point. The parapet raises the height of the roof on both upper sections. That is the view from my backyard.

If I can go back, those two windows there are my lounge room windows. The window behind—I have an open-plan kitchen, dining, family area—is where the shading occurs.

I will very quickly go to the shadow photos. This is one o'clock on the winter solstice and you can see that shadow is actually the lower parapet.

If I can show the properties you can see the time that this was taken. I am sorry, on my computer at home it actually displays the time.

**THE CHAIR**: It did display it.

**Ms Cully**: I can give you the approximate time. That is approximately 1.15, 1.30. The next one I believe would be 1.45. You can see the shadow of the top parapet starts to overshadow the lounge room windows as well. This is as the afternoon proceeds. You can see all three windows are impacted. The impact starts from one o'clock and by approximately a quarter past two most of the light to my main living area is blocked.

Have you got any questions at this point?

**MR PARTON**: I do not know if I am over-exceeding my position on it but, with all respect—and I have gone through your submission and I think what you have gone through is remarkable—I know our time here is very, short and I think we should focus on the DA process and how you feel that it has let you down.

**Ms Cully**: Yes.

**THE CHAIR**: Absolutely.

**MR PARTON**: Rather than on your specific case, because I think we can clearly see that there are major concerns.

**THE CHAIR**: There is an issue. You were correct, Mr Parton.

**Ms Cully**: With respect to the engagement process, I have no training in architecture or drafting but it was plainly obvious to me, when I first got this letter in my letterbox, which was the first that I was aware that this development was going ahead, with potentially major impact on my property, that there was something seriously wrong with the documentation, that there were obvious errors and omissions.

I was, I suppose, lacking a bit in confidence because I thought, "Do I understand the rules properly?" I had accessed the single dwelling rules and criteria and whatnot. I emailed the assessment officer and when I did not receive a response I followed up a few days later.

Basically, in a nutshell, the gentlemen did not seem interested at all. His response was, "You don't need to be concerned because it will all be sorted out when I do the assessment." I immediately engaged a town planner because I thought, "If the authority does not believe me, or whatever the problem is, then surely they will listen to an industry professional."

**MR PARTON**: Was that expensive?

**Ms Cully**: Yes, that was well over $2,500. In all, with the legal advice as well, I did not get much change out of $5,000. It is not complete. I will be engaging a surveyor to independently survey the work.

But the thing was: I do not understand why the documentation was clearly false or misleading—and I mean grossly misleading, because we have a solar envelope drawn back to front. What is more misleading than that? How am I expected or, indeed, how is the assessment team expected, to do an effective and efficient assessment process when they are being provided with this sort of information?

**MR PARTON**: Do you believe that was an error?

**Ms Cully**: This is the whole thing. I do not wish to speculate on motives. It is a question of objective fact. Either the information was accurate or it was not. It was highly inaccurate. There was a pattern of behaviour there. After the second notification, after two rounds of submissions, these claims are being made.

I am not commenting on motives but the key point is: there was no disincentive to providing inaccurate, incomplete or misleading information. Without a proper incentive structure it impacts not only on the neighbours and surrounding properties but on the efficiency of the public servants responsible for administering DA processes. They have to go running back to find out the source of truth or what is

accurate.

The applicant in question is a registered architect, a winner of numerous awards et cetera. I would have thought that it was reasonable for someone to be able to rely on that. Clearly it was not. But the problem, I would suggest, is with the structure.

There is another problem there, which I think is actually in the regulatory system itself because it is not necessarily the engagement process but it does relate to it. And that is that where you have a clear, rule-based system there is not scope for fudging here, fudging there, pushing the boundaries, exploiting loopholes.

I was under the misapprehension that there was a statutory system in place to protect solar access and to protect privacy as well as other aspects of amenity. As I worked through this I realised that whilst the objectives are there—the objectives in the legislation are great—when it comes to being actually translated down to rules and then criteria there is a disconnect.

**THE CHAIR**: You have had a lot of problems. What was the biggest single issue that led to the problems, do you think?

**Ms Cully**: The biggest issue that led to the problems, I would say, actually is the statutory and policy framework. Clear policy is there so that people are not rewarded for providing inaccurate and incomplete documentation.

**THE CHAIR**: When you first said that I thought you meant that the problem was the policy of taking solar access, as you just mentioned, was the issue.

**Ms Cully**: Indeed, both.

**THE CHAIR**: If that was wrong inevitably you were going to—

**Ms Cully**: Yes.

**THE CHAIR**: But you were talking about something different?

**Ms Cully**: No, I was talking about both. I am speaking about the framework in terms of the rules about what people are and are not allowed to do in terms of overshadowing the neighbours' properties.

One key point was a question that was asked at an earlier session about whether this was a matter of the rights of existing residents versus the rights of new residents. It is not about that at all. All new residents that I have spoken to value their solar access. What this was about was: does someone have the right to attach a facade that blocks the solar access—competing rights? And the statutory framework was not sufficiently robust to protect, in this case, the neighbour's solar access.

**MR MILLIGAN**: If that facade was taken down, do you think the problem would be solved?

**Ms Cully**: It would be a very large improvement. Can I just say, it is the side parapet.

It is not the front parapet. Ironically that is what the DA team originally approved. And it is only in this last week that I realised that it was immediately after the approval the applicant must have gone back very quickly and sought an amendment, which I was not advised about.

**MS ORR**: Originally the DA was approved without the parapets and then of course the issue—

**Ms Cully**: Originally the DA approval required the side parapets to be removed. That was the original approval, yes.

**THE CHAIR**: I think we would all like to continue talking but unfortunately we have run out of time.

**MS CHEYNE**: Can I ask one question? It is brief.

**THE CHAIR**: Yes, but very brief.

**MS CHEYNE**: As specific or as ballpark as you can give us, how much money and time have you spent on this?

**Ms Cully**: So far I have spent about $5,000. I could not afford to employ myself to audit this documentation—hundreds of hours, hundreds and hundreds of hours.

**MS CHEYNE**: And you came to this as someone who knew nothing about DA processes?

**Ms Cully**: Yes.

**THE CHAIR**: Thank you very much. I am sorry, we have got to wind up now.

**Ms Cully**: Thank you. Can I just say: if you do have further questions I would be very happy to respond within a period, if they can be passed on.

**THE CHAIR**: Thank you very much. Obviously we will send you the transcript and if there are any issues you can let us know.

**Short suspension.**

**MITCHELL, MR JOHN**

**THE CHAIR**: We will resume the hearing of the Standing Committee on Planning and Urban Renewal. Thank you, Mr Mitchell, for appearing before us this afternoon. I draw your attention to the pink privilege statement. Can you confirm for the record that you understand the privilege implications of the statement?

**Mr Mitchell**: That is fine.

**THE CHAIR**: Have you an opening statement, Mr Mitchell?

**Mr Mitchell**: I do. I want to make two comments. One is a general preface about the inquiry and the other is a brief introduction to my own material. The first point is that I would like to congratulate the Assembly for listening to community concerns and establishing this inquiry. I sincerely hope that the budget is allowing not only for these hearings to be held but also for professional advisers independent of the ACT's own planning department to help the committee in evaluating the submissions and formulating a comprehensive list of recommendations for the Assembly's consideration.

The second point is that the inquiry has attracted a large number of submissions, of varying size and subjects, all with a common message: the ACT's planning process has failed its community at every level: in the making of plans and consultations with community; in the development application assessments; and in the enforcement of compliance with development.

Many of the submissions have come from community groups and other third parties who find themselves making them regularly because the planning system keeps failing them. They do not do it for money, nor do they do it in the expectation of credits for a creative writing course. They do it because they love their community, they love their neighbourhoods, they love their city and they are deeply concerned with what is happening to them.

I reflect on a piece in the *Canberra Times* yesterday from the property group really complaining about the influence of third party submissions and asking that they should be excised from the system. I think it is a most unequal system. The community groups go to hearings, go to ACATs, make these submissions, often without acknowledgement in the process or in wider policy considerations.

It is expensive for them to appeal any verdict or any decision of the planning system. As I say, they go there in a most unequal arrangement. I think that until the system is fixed and is truly accountable, the third party appeals and submissions should be regarded as an absolutely essential part of the system. Removing them really cannot be a consideration until the act has been cleaned up.

In relation to my own consideration, mine is very short compared to most. It really was just a summary of a matter currently before Access Canberra. It is the current step in what has been a very long process. It started with a simple complaint and inquiry through the minister's office as to how five car parking spaces in the basement of the

Dockside development could have been converted to commercial storage without any planning approvals at all.

In my experience of planning and as a practising architect in dealing with these sorts of applications, normally car parking is regarded as sacrosanct. It is asked for for a reason and it is a condition of a permit for a really very good reason. These were all mandated car parking spaces. The consent for Dockside made it quite clear that the car parking in the foreshore area is a real problem, and would continue to be, and that the car parking was needed. Yet on the word of the body corporate, the two clients or two commercial tenants in the building were able, between the two of them, to remove five car spaces.

The inquiry to the minister said, "Yes, a permit is required and they should not be there without a permit. But if you want anything done you have got to make a complaint." So I made the complaint to Access Canberra. It started well. The inspectors seemed to be inspecting and getting on with the job. Then suddenly there was pushback. It appeared that someone within the body corporate group or the client group had access to Access. At the end of it, Access said that this might be a mere technical breach, but that they would not be taking any action; this is good for jobs and growth; good for business in the area.

As the Access investigation was grinding on, I in fact made further inquiries and found that it was not just the five spaces within our building. A total of another four at the basement level had been informally repurposed and were being used for food storage and furniture storage and at the ground floor level another five were being used for food storage, including cool rooms, none of which had planning approval.

Then I spoke around other developments. At Aurora, which is a very similar mixed use development, another seven had been repurposed, in this case not by the body corporate but by the developer during the period of handover. Again, there were no permits of any sort. As a result of the Access inquiry and their decision to do nothing, I went to ACAT and made the case for the known Dockside discrepancies and the seven at Aurora. I made the case that unless this were dealt with formally, a DA process, a DA application and formal investigation made, there is absolutely no reason why all of the 33 commercial car spaces in the Dockside building should not be repurposed.

**THE CHAIR**: Can I check on your status with ACAT? Is this matter resolved? I assume it is resolved—

**Mr Mitchell**: ACAT is resolved and they have said—

**THE CHAIR**: because we cannot really talk about matters that are in train.

**Mr Mitchell**: Yes. Well, that is resolved and they have said they will not take a decision against a government department. Another five orders that I sought against the body corporate they dismissed because they did not believe that they had any authority to take action. This was really a body corporate becoming a de facto planning authority. ACAT felt they had no authority to act in the matter.

One of the more absurd claims from Access Canberra in this is that this is a matter of no consequence; there are no costs. They have a word. It is not "costs". It is a word like "consequence". Anyway, for the record, depending how you read it, if 15 spaces at present, or if all of the Dockside car spaces, were handed over, to provide that space off-street—there is no room on-street; it is already absolutely saturated—would cost $40,000 for each off-street car parking space if it is going to go into a structured car park, which is proposed for the arts precinct. Fifteen spaces at $40,000 a space would be $600,000. If all 33 at Dockside and seven at Aurora went the same way, it would be 40 by $40,000—$1.6 million. That is the cost of this folly.

**THE CHAIR**: Thank you very much, Mr Mitchell. My question is this: how do you think it went wrong? From what you say, the car parks were put there originally as per the code and the DA and all of that was done. Why did it go off the rails? I will not speculate. How did this all go wrong?

**Mr Mitchell**: Candidly, I think there was influence. But putting that aside, I do not think the planning department engaged with it. It was entirely handled by Access. Access wanted no result and that is what they got. I think planning were just sidelined from it. I have documentation through FOI of the whole thing: letters from professional planners saying, "You cannot do this. You are setting a precedent. Those car spaces must stay." That was absolutely ignored by the Access inquiry.

**THE CHAIR**: So Access just told you it was okay and there was nothing—

**Mr Mitchell**: Good for jobs and growth.

**THE CHAIR**: And with just no consequence? It was not an issue for them that it was not as per the DA?

**Mr Mitchell**: No.

**THE CHAIR**: So you were in the position that you believed that ACAT was the only place you could go?

**Mr Mitchell**: I did go. It has had a long history. I did go to the Ombudsman. The Ombudsman looked at it and said, "We believe there is a case to answer here." The problem is because there has been no DA, there is therefore no file and no planning matter to appeal. They said, "We think you would do better to go to ACAT seeking orders from the body corporate under the UTMA; so that is what we did. We went to ACAT under the UTMA asking for, I think, six orders.

**THE CHAIR**: How much money and time did this cost you?

**Mr Mitchell**: In time, it has been hundreds of hours. What is my time worth? I am a retired person, a retired architect.

**MR PARTON**: I think it is worth a lot. I think it is worth a lot.

**Mr Mitchell**: Well, $140 to go to ACAT; so that is the only out-of-pocket expense, but a great deal of time and it is an ongoing matter.

**MS ORR**: I am happy to pass my question to Ms Cheyne.

**MS CHEYNE**: I have a similar question to Ms Le Couteur. It is not just time, money and effort. What personal impact has it had on you, Mr Mitchell?

**Mr Mitchell**: You probably should ask my wife that. I have a very thick skin but it is wearing. To be quite frank, I think that Access simply wear people down. I call it the Clayton's compliance unit, because it is—

**MS CHEYNE**: Say again?

**Mr Mitchell**: It is the Clayton's compliance unit. It is the compliance unit you have when you do not want compliance. There is a whole record of these things. I am happy to let you know the ones. I talk about it; people talk back to me about it. It really is an industry. Access apparently looks after lost dogs and cats up trees. They do all those sorts of thing well. But when it comes to things that are affecting people's influence, influence is bought. There is no doubt about that.

**MR PARTON**: Did you feel like one man against the machine on occasions?

**Mr Mitchell**: Very much so because it is really so brazen. At every point they are saying—in my FOI on the Access file, the last letter was saying, "Nobody is to speak to this man again." That was referring to Mr Snowden who at that time I think was under Peffer at Access.

**MR PARTON**: John, I cannot help but think when I hear your story—we have heard a number of these stories—that I would like to believe that people should have faith in the mechanisms that we have to deal with these things. I see that you have been let down; Ruth in the corner over there has been let down. I do not understand what has led to the shutters going up, the walls going up and you being locked out of the process. I understand that you have some opinions as to why, but perhaps you do not really want to share them.

**Mr Mitchell**: We have all got to be careful in this sort of environment, but I publish a newspaper that is called the *Eastlaker*. It is a new start-up in the south-east of Canberra. In the next edition I am going to do an editorial on Clayton's compliance and just lay out what has happened in my case and others that I am aware of. I will say that it is really something the government needs to look at. I think it is probably prime territory for the new ICAC.

**MS CHEYNE**: What can we do, save referring people to ICAC? What changes can we recommend so that you do not have to go through what you have been through again?

**Mr Mitchell**: I think the best thing the Assembly could do, and I think it is true of all the planning things as well, is to make it clear you are looking at them. I have had conversations with members; I sat on the Melbourne City Council for three years, for a term, a long time ago. It was a really very good experience of local government. As an architect, I have engaged with local government.

I have not practised now for 30 years, but in the period before that I had close consultations with local government and for the past 20 years of living at Braidwood, I published a paper in Bungendore which looked at the goings on of the Palerang council, because I am really interested in what local government does.

It appears that in the ACT self-government arrangement we do not really have local government. There is not really the day-to-day involvement with DAs that local government normally gets. They do not go through every DA coming before the council, it is a reporting by exception. So there may be a certain number of objections. One objection, for instance, does not necessarily trigger a reference to council, but where there are significant objections, and well-based objections, it will go to council.

If it defies council policy, it will go to council and council will have to make a decision on policy before it will be approved. But it means it is being looked at. Local government has always polled as the most trusted level of government, notwithstanding that there is so much criticism of it. This is because it is transparent and its operations are transparent. I think for planning and compliance you have an absolute fog.

**MS CHEYNE**: A what?

**Mr Mitchell**: A fog.

**MR MILLIGAN**: I am happy to pass to Mr Parton if he has a question.

**MR PARTON**: I am confident that I have what you have to give this committee hearing. I have no further questions.

**Mr Mitchell**: I would love to say more, but I will not. It is probably not appropriate here, but I think someone really needs to have a really good look at that operation from the top man right down, and the main problem I think is at the top.

**THE CHAIR**: Mr Mitchell, thank you very much for your attendance this afternoon.

**Mr Mitchell**: Thank you, Madam Chair. Thank you, members.

**THE CHAIR**: A *Hansard* transcript will be sent to you in a few days. If there are any issues, get them back to the secretary. We will have a brief intermission.

**Mr Mitchell**: Does anyone have queries on the submission at all? That is straightforward, such as it is.

**THE CHAIR**: We have all read it and if members had queries, they would have asked you about them.

**Mr Mitchell**: Yes. Thank you very much.

**Short suspension.**

**HORNE, MS DIRA**

**THE CHAIR**: Thank you for joining us, Ms Horne. Before we start, can you just confirm that you have seen and appreciate the pink privilege statement?

**Ms Horne**: Yes.

**THE CHAIR**: Thank you very much. Do you have an opening statement?

**Ms Horne**: You have a copy of my submission. I am here today due to the frustrations of my recent DA application.

I live in Aranda on a block that is 1,486 square metres. In 2006 my father was unwell and ailing, so I applied to build a unit on our block. I was told that we could not have a dual occupancy, which I could not quite understand—I understand there were zonings—because four doors down there were five apartments and townhouses on a block smaller than mine.

What they suggested, in order to get my parents to move in so I could care for them, was that they approve a temporary care facility. That was the only way I could care for my parents and keep them out of residential care. The proviso was that when we sold the property we had to remove the kitchen and the laundry. I thought, "Okay, this is a way off." I could not understand why. It is a substantial townhouse; it is not a granny flat. I thought that maybe over time things would change when I came to sell the property.

My father passed away and my mother is going into Goodwin next year. The block is just too big for me and my mum, to be honest, to keep maintaining it. I went to planning and I said, "We have this thing called a temporary care facility; I wish to sell my house." I was told that that legislation no longer exists, and we would need to get a secondary residence approval. I said, "How do we go about this?" I was doing it by myself. I am trying to save the funds for my mother's care, so I did not want to pay a consultant thousands of dollars to fill out an application form.

I guess my story started from there. There was the information, trying to log on, being told different things constantly. When I finally got a login and registered, I struggled to understand the terminology in the application, and asked if I could have a meeting with somebody to help me do this. They said, "No; we do not meet with people to do this type of application."

I struggled through and then I attended the shopfront. I was told to get the plans and do the stuff. I had all the plans done. All we needed to do was make sure that there was a firewall between the two residences. I understood that that was what was required. The architect who did our original plans drew that in. I attended the shopfront and said, "I cannot fill out this application." They were very helpful and said, "We will help you do it."

The person struggled through, persisting with me. This new secondary residence is a new piece of legislation, so I do not think they quite understood how to do it either,

but we submitted it. I then went back again and said, “Have we got all the plans? Is everything in order?” They said, “Absolutely. Everything is in and it will take five to seven days.”

I gave it about 10 days. I rang back and was told, “No.” I needed X, Y, and Z. I then received a letter saying I needed a soil erosion plan and a water plan. I do not think they quite understood that the building had been in place for 10 years. I kept saying, “Why do I need to redo all this when we are really putting up a firewall between the doors?” As you go into my house, there is one front common entry; you take a left into my parents’ apartment and a right into mine. They were saying that to get a secondary residence you need a firewall, which I understand.

I did not understand why I needed these three other sets of documentation. They could not answer that. I kept being told, “This is really complicated; we have not done this sort of thing before.” I asked to speak to someone a bit more senior. I came back in for another meeting. He said, “No, you do not need that, that and that.”

Then it had not quite got approved. I went back again and was told I needed an adaptability plan. When this temporary care facility was built, it was built with the proviso of wheelchair accessibility. I said, “Why do I need an adaptability plan?” You could see on the drawings that all the corridors were wide enough if my father ever needed a wheelchair. They said, “We just require that.” I said, “How do I get one?” They said, “Just google it.” I had appeared in that office maybe six times. I felt that being told to google something I did not quite understand was not really quite useful. After much frustration with this process—we also experienced the same thing 10 years ago—I wrote to the director-general and outlined my frustration with the process.

We have a time frame to get the building completed and the renovations done before Christmas, because we are going to the market in March. We knew we would not get a builder. I was thinking this was a smooth process in order to get the work completed to sell.

I have to say that once I had written to the director-general and was assigned a specific senior manager, everything happened within 30 minutes. It was stamped and approved within 30 minutes. That was helpful, but not everybody knows to go. I had thought of going to the minister, but I thought, “That will just go back to the department.”

So the matter was resolved very quickly. It was just that the time it took for me, and the frustration and the anxiety my mother was experiencing around this process were just unnecessary. And I still to this day do not understand why I had to pay thousands of dollars for this process and the application, because the building had been built. It was approved for something that no longer exists, yet I had to pay another whole DA application to block up a wall. There was a huge cost for that. I understand the building certifier, but I did challenge why this was a full DA process to put up a firewall when I had already paid for the application 10 years ago. But in order to just get it moving, I paid the funds.

**THE CHAIR**: I have your submission, and there is one thing that I really do not

understand. You had built something that was 95 square metres and the current secondary residence is 90 square metres. Did anyone suggest that it might be possible to approve it as a secondary residence despite that? We have heard stories of things which to a layperson would appear to be equally noncompliant being approved.

**Ms Horne**: No, nobody suggested that. We really struggled. My parents wanted 100 squares; they just needed that extra small room for a study. Given that I had a walk-in wardrobe up against it, I said, "Take that for a study." So we did that. But coming back, that could not remain, so we had to put the firewall all the way across. It was just the amount of time and a lack of knowledge. And being told I could not be assigned someone. I said, "If nobody understands this process, give me one person I can liaise with." That is all I wanted. I understand that it is training and it is a new piece of legislation, but I just wanted one person to deal with instead of turning up every morning with different sets of plans and trying to work through what should have been a fairly simple process.

**THE CHAIR**: Did you feel that the issue was because you are clearly a layperson and not part of the building or architectural industry, or was it that they actually did not know?

**Ms Horne**: I do not think they knew. I do not think it was because I was not experienced. I just was not prepared to pay someone to do this for me. I kept thinking, "It can't be hard; it's a firewall." But the person on the counter tried to fill it out for me and he could not fill it out. When they said, "You have filled this out incorrectly," I said, "No; that was your officer who filled this out for me." It just went backwards and forwards for far too long.

It was not a complicated thing. I am very happy to have a secondary residence, but on the other hand, we could have sold it as a care facility. If other people in my situation want to move in an elderly parent or a child with a disability who could have some level of independence, it is a perfect home for that.

Now with my mother, we are all finding it frustrating. She would just come across the corridor and knock. Now she does not come out because it is a bit cold at night and she has to come out through the courtyard and back through my place. I think it is a bit silly myself, but we could not sell it any other way.

**MS CHEYNE**: Something we have asked a lot of the individuals who have appeared this afternoon is: did you have any experience with navigating the DA process before you had to go through this?

**Ms Horne**: Only in 2006, and that was—

**MS CHEYNE**: But before then?

**Ms Horne**: No. That was equally difficult, I would have to say, if not more so.

**MS CHEYNE**: How much time do you think you spent not only on navigating the system but also on trying to understand the system? I do not mean just making the phone calls and sending in the documentation but getting a grasp of, "What the hell do

I have to do here?"

**Ms Horne**: Days, really. When I went to the shopfront in Mitchell, which I understand is not part of planning, I had some very good help there, with trying to locate my original plans. The assistance was fabulous.

**MS CHEYNE**: But the actual development application stuff was—

**Ms Horne**: Yes. As I said, if you have read my submission, with just trying to log in, there is no clear way of, "Do this first, then do this." Finally, I had to ring and say, "I can't do this, it's not letting me in."

**MS CHEYNE**: There is no step-by-step guide; there is no checklist?

**Ms Horne**: No.

**MS CHEYNE**: I forget the term that the gentleman we heard from earlier, Mr Mitchell, used. In some cases it appears that some officials either do not understand what they are doing, which I have heard from you today, or appear to the people who are trying to engage in the process to be obfuscating. Do you think that is the case?

**Ms Horne**: No, I did not experience that. I think that because the secondary residence aspect was relatively new, the staff were not as well trained as they should have been to understand it. But they also did not pass it up the line. Every time I rang or spoke to someone I kept being told, "This is complicated." I said, "Give me someone who understands it." I was working and I was busy.

**MS CHEYNE**: I think that is what we have—

**Ms Horne**: I just wanted to be given the right information once.

**MS CHEYNE**: "Here is the process to follow."

**Ms Horne**: Yes. It is probably not as big an issue as what has been presented by other people today, but it is not the first time; we experienced it in 2006. I hope I do not experience it again.

**MS CHEYNE**: I appreciate that it is a different example, but I think that is the theme that we have heard from submitters and people who have appeared. The inquiry is about DA processes, but no matter how you are engaging, the process is not necessarily clear.

**Ms Horne**: No.

**MS CHEYNE**: Whether you are objecting to a DA or wanting to comment on it, or whether you are the applicant, there are bits that hold you up or that are confusing, or you are not quite sure why—

**Ms Horne**: Yes, and I am not sure why I was not allowed to have a meeting from the

very beginning. I was just told, "No, we don't have meetings for this type of DA application."

**MR PARTON**: It is interesting, because when you said that, I could not help thinking that at that point, if someone had just met with you, it probably would have been sorted out, wouldn't it?

**Ms Horne**: Yes, absolutely; met with me from the beginning and said, "This is what we need, and this is why." Instead of going backwards and forwards on soil erosion plans, water plans and adaptability plans, I could have got all of that information. It was a fairly simple thing that needed to happen but the process was not simple.

Really, it involved two firewalls and blocking it up; the construction and all those things were not difficult. It was about the different requests for paperwork and people not understanding why certain reports were required. I was then told to google things, and I said, "This was approved in 2006 as adaptable." There was a lack of reading the plans to see that the doorways were 900. It was all there. I am not an architect but people should be able to read the measurements and say, "This is all adaptable; it has been built for this purpose."

Even the certifier who came to look at it said straightaway, "Yes, it meets all the criteria." I said, "We knew it did because we built it in line with wheelchair accessibility from the very beginning."

**MR MILLIGAN**: My question is pretty much in line with what Ms Cheyne has already asked about. It is about the whole process, particularly for someone who is not a town planner, an architect or anything like that. Are there any suggestions or recommendations about what you think should be looked at to help to address that issue?

**Ms Horne**: I put some in my submission. One of the senior managers should be assigned to you. The moment you start a process, having someone fairly consistently through the process would have been helpful. As I said I got excellent support once I escalated the matter. Within 30 minutes it was done, stamped and ready for me to get builders in. It was not overly delayed, but we are on a tight time frame. Because of the time frames, we only got one builder to quote on it which we have just had to go with, because we are running out of time to get anyone to do the job.

**MR PARTON**: How will the place be sold? Obviously, there are not separate titles.

**Ms Horne**: No.

**MR PARTON**: There just happen to be two residences on a—

**Ms Horne**: Two residences. It is called a secondary residence. I still do not understand why we could not have got a dual occupancy on a 1,486 block.

**MR PARTON**: A big block.

**Ms Horne**: That was 10 years ago, and I am not going to go there now. It would have

been easy to have a—

**MR MILLIGAN**: That is four blocks in Gungahlin.

**Ms Horne**: Yes.

**MR PARTON**: It is probably five.

**Ms Horne**: The block is nearly 1,500 squares, so I am still failing to see why I could not have got the dual occupancy originally. Having a second residence just means that there are two properties on the one block. People can either use it as a rental or have a family member live in it, which is what it is ideal for. If somebody is considering bringing elderly parents or someone else in, they can just take the brick wall down again, until they sell it.

**MR PARTON**: How absurd would that be?

**Ms Horne**: We will do that in terms of the marketing. If people want to consider having it as a carer's unit, you can take out the bricked-up wall again and have that ease of access.

**MR PARTON**: If you put in the appropriate DA to do that.

**Ms Horne**: I think you could just do it; you could just pull down the wall, but put it back up when you sell it. I understand the need for the firewall, if you are renting it and there has to be that separation, so I do not have an issue with that.

**THE CHAIR**: Thank you very much, Ms Horne. We will have an intermission and come back at 3.30.

**Hearing suspended from 2.47 to 3.33 pm.**

**GENTLEMAN, MR MICK,** Minister for the Environment and Heritage, Minister for Planning and Land Management, Minister for Police and Emergency Services and Minister assisting the Chief Minister on Advanced Technology and Space Industries
**PONTON, MR BEN,** Director-General, EPSDD
**CILLIERS, MR GEORGE,** Senior Manager, Merit Assessment and Deed Management, EPSDD
**PHILLIPS, MR BRETT,** Executive Director, Planning Delivery Division, EPSDD
**RUTLEDGE, MR GEOFFREY,** Deputy Director-General, Sustainability and the Built Environment, EPSDD

**THE CHAIR**: Welcome. I imagine that you have all seen the pink privilege statement, but could you please confirm that you understand the privilege implications.

**Mr Gentleman**: Yes, we do.

**THE CHAIR**: Minister, do you have an opening statement?

**Mr Gentleman**: Yes, thank you, just a short statement. Thanks for the opportunity to appear before the committee today to discuss the important issues of community engagement with the development application process. I would like to provide the committee with some important contextual information on some of the recent achievements of the Planning and Land Authority in this area as well as the current challenges.

The independent Planning and Land Authority continues to work with the community and the development industry to deliver good planning outcomes for our city. The government recognises that better outcomes and community support are achieved through proper and meaningful consultation, and this can only happen where the development application process is transparent, accessible and informative.

So Ben Ponton, our chief planning executive, released the pre-DA community consultation guidelines in November 2017 after consultation with the community and developers. These guidelines affirm that consultation and community engagement are essential elements when configuring the design of major developments. The guidelines require certain consultation activities to be undertaken and set expectations about the minimum documentation that must be submitted as well. The guidelines demonstrate the commitment of the ACT government and the chief planning executive to providing effective and innovative ways to involve industry and all sections of the community in the DA process.

The government is also currently undertaking an update of the planning website to improve the user experience and make it easier for the general public to find information that they require. It is expected that the new website will be launched later this year and will feature a considerably improved layout and updated information as well.

Also in the technology space, the DA finder app has proved to be very popular since being introduced in 2014. The app allows a user to be notified of any DAs, Territory

Plan variations and environmental impact assessments within a specified area. It also allows a user to provide formal comments during the public notification period. The DA finder app was recently upgraded to improve the notification and search functions, with other improvements expected in the future.

The Planning and Land Authority has also recently taken the opportunity to improve the DA notification process by making updates to DA signage locations at development sites. The authority has updated the language and visual appeal of DA signage to ensure that the key information is clearly displayed on the sign and that further information is easy to obtain.

The final project I would like to talk about is the upgrade of e-development which is well underway and will provide the development industry and the community with an improved service and greater accessibility of DAs and supporting documentation. The upgrade, once released, will allow the community to access any DA and its associated forms, plans and supporting documents during the notification process. It will also allow access to previous decisions on DAs lodged through the upgraded e-development platform. I expect the updated e-development systems to be rolled out later this financial year.

Turning to the challenges faced by the Planning and Land Authority, the authority is working hard with proponents and the community to meet the needs of our growing city and to respond to urban renewal occurring across the city and town centres. In the 2017-18 financial year the authority saw a 25 per cent increase in the number of development applications and estate development plans lodged. In addition there has been an increase in DAs in town and suburban centres. That has led to increasing community interest in developments. The division has also seen an increase in the complexity of the development applications being submitted as mixed use developments are proposed for the city, town and local centres.

Alongside my colleagues from the directorate, I would be happy to take any questions the committee may have during this hearing.

**THE CHAIR**: Thank you, Minister. I would like to start off by talking about errors in evaluation of DAs. We have heard evidence from a range of people that when they look at a DA there are often a number of places where, in their opinion, the DA is not compliant with rules or criteria or both. It has been a common comment that has been made to us. Why is this so?

**Mr Gentleman**: Is there a particular instance that you could point at so that we can give you some detailed information on that?

**THE CHAIR**: I would have to go back into some of the submissions.

**Mr Gentleman**: In the meantime Mr Ponton will be able to give you some generic answers.

**THE CHAIR**: I think it is a general problem. We have had enough evidence; it is not a specific one.

**Mr Ponton**: I am happy to make some comments on that. In terms of errors, there are two aspects. I am assuming you are talking about when people are looking at applications that have been publicly notified and identifying errors during that process as opposed to after a decision has been made.

**THE CHAIR**: I am talking really about both, but maybe start off with the first one. We just had a number of individuals, for instance, come and talk to us, and half of them, two of the four of them, were definitely clear that there were problems within the evaluation of the DA. Apart from anything else, they felt that this one was just not correct.

**Mr Ponton**: The point that I would make here is that the assessment is exactly that: it is an assessment. We cannot stop people from lodging an application. They may make an application with errors in it, but part of the assessment process is that we will pick those errors up. If, for example, they have not clearly identified dimensions on a plan, then we will identify that. If during the assessment process there is noncompliance with rules or there is not a statement against the criteria, we will pick that up.

But in terms of natural justice principles, people are entitled under the law to lodge an application. It simply means that under assessment we will identify issues and it may be that that application is not approved. It has been put to me by members of the community that we ought not to accept the application. To do that then we would be moving the assessment phase to before the assessment currently occurs. That is a duplication of effort, essentially, because we would have to undertake a full and thorough assessment.

What we do now is what we call a completeness check, and that completeness check is looking for the basics. Are there elevations? Is there a site plan? Is there a traffic report? Are there flood studies if necessary? The completeness check does not go into the next level of assessment and look at whether it is adequate for that proposal to be approved, because that in fact is what the assessment is.

**MS CHEYNE**: What about in terms of having accurate documentation? We have heard throughout the hearings that there is documentation that goes online which is—it is not necessarily about having it assessed and whether it complies and is going to be fine. Documents are mislabelled. I think someone the other day said that a document for a street in Macquarie had reference to Moncrieff in it. We have heard numerous other examples as well. If that completeness check is not occurring at the stage when those documents are going out to the community to look at in the consultation phase, that immediately makes them concerned about the process, what has already been scrutinised and whether they should be trusting the process if those inaccuracies are already there.

**Mr Ponton**: Sure. Again, I make the point that it is a completeness check. In the good old days we used to refer to it as the counter check. You would come in and somebody at the counter would quickly go through and just check to make sure you had the absolute basics. Even in that example, it sounds to me like it would be a statement against the criteria. It may be that an applicant has re-used a pro forma. For the completeness check to pick that up, they would have to go through and read that entire document. What they would be doing at the completeness check—at the

counter, essentially, but now it is electronically lodged—is saying there is a statement against the criteria.

Certainly, we could expand the completeness check. But we would be bringing forward a lot of the assessment into that completeness check. In fact over the years it has waxed and waned in terms of how much effort is put into that completeness check. It is interesting how, when you have been in a place long enough, you start to see things coming around again. There was a period when there was a suggestion that we were not doing enough. We did a lot more. That was what was called validation; it was a validation check at that point. And the planning authority at the time was heavily criticised, that it was undertaking the assessment, and the applicants insisted on their right to have what they put forward publicly notified. So we try to find the balance in making sure that there is enough information in terms of the absolute basics but without undertaking an assessment.

**MR PARTON**: In this instance what we hear from—

**Mr Gentleman**: There is a document checklist, though, that is available for applicants to have a look at. It shows the minimum amount of documentation that must be required. That checklist is updated quarterly, so it is relative to the currency of DAs going in now.

**THE CHAIR**: Mr Ponton, what you are saying is something which I have to say would be news to most of the community, and certainly to me. You are basically saying that as long as they produce 10 pieces of paper, or however many there are, you will put it out. The community is certainly—

**Mr Ponton**: To be clear, we have to put it out. If someone lodges an application, we are required by the law to publically notify that and allow people to go through the process and apply natural justice.

**THE CHAIR**: I am not suggesting that what you are doing is not legal. I am just saying how it appears to, I think, members of the public, and certainly in some ways to me. The thought that people generally have is that ACTPLA has accepted this application. They look at it and find there are X, Y, and Z things which—

**Mr Ponton**: In terms of clarity of language, we do not accept at that point.

**THE CHAIR**: It has been lodged.

**Mr Ponton**: It has been lodged. But we do not have the choice to accept or not accept unless it is in the wrong track.

**THE CHAIR**: ACTPLA has received and published this application. You have done something with it. You have received it and put it out for public consultation.

**Mr Ponton**: Yes, as required by the law.

**THE CHAIR**: I am not trying to suggest for a minute that what you are doing is not lawful. I assume that everything you are doing is lawful. What I am saying is that this

DA appears on your website and people assume that there has been some level of checking by somebody, be it ACTPLA, the applicants or whoever, that the application is something which is approvable. The general assumption is that if it is there it is proceeding in the direction of—

**Mr Ponton**: If that was the case, I would be saying that in fact what we would need to notify would be our draft decision. If we have undertaken the assessment, rather than seek people's views on an application that has been lodged, we will have formed a view that it is approvable before we notified, and therefore we would be at the point which would be unique, I would have thought—

**MR PARTON**: I do not think we are talking about approval or not approval; we are just talking about—

**Mr Ponton**: Ms Le Couteur did say, though, that it is approvable if it is on—

**THE CHAIR**: I said it would appear to be approvable.

**Mr Ponton**: Yes.

**THE CHAIR**: We have heard from a number of people, and over the years I have heard from even more, who have spent significant amounts of time going through DAs on your website and identifying large numbers of things which would appear to be against the rules or the criteria, so in their opinion, there would be no possibility of it being approved. These will all be applications which would be very worrying to the people if they were approved; otherwise they would not have put the energy into trying to work out if they are possible to be approved. This seems an incredibly inefficient process. You are expecting the people of Canberra to go through and look at things which are—

**Mr Ponton**: But we are not. We are not. I have had many conversations with community groups. I have had this conversation with the community councils that I meet with on a regular basis. Every two months I meet with the community councils. This topic comes up from time to time. We are very clear that we do not expect people to go through every single rule and every single criterion.

An objection to a development does not need to address every point. They can simply say, "We are concerned about traffic impacts." We do not expect them to go through and analyse and engage an engineer to look at whether the traffic report and the methodology sitting behind that are adequate. That is not the expectation of public notification. It is about providing the information that has been given to us for that public comment. It is our job to assess the application.

What I am hearing is that there is a suggestion, perhaps, that we undertake an assessment as to whether or not it is approvable, in which case I would be saying that would be happening all the way back here, and therefore, by the time it is publicly notified, we would have formed a view. That would be unique within Australia, if not the world.

**MS CHEYNE**: I appreciate that this is becoming a conversation rather than a

question and answer session, but from what we have heard, I think it would reduce an enormous amount of anxiety in the community. If there are errors in that, they start to worry if there are broader errors and broader impacts that they are not aware of.

**Mr Ponton**: With the greatest of respect, I suspect that if I notified that I had undertaken an assessment before the community got to see that documentation and notified my intention to approve an application, the concern would be that we had formed a view before we had spoken to the community.

**MS CHEYNE**: I do not think it is going that far, though. I think it is going, "We have had a look through, and in terms of completeness, it is completed and accurate."

**Mr Ponton**: But to do that—

**MR PARTON**: And that is all we are talking about: complete and accurate information. We are not talking about the approval or otherwise of a DA.

**Mr Ponton**: Again, with the greatest of respect, Mr Parton, Ms Le Couteur did talk about it being approvable and making sure that with the rules and criteria there are no inaccuracies in relation to that. What I am hearing is that we would have to go back to undertake that detailed assessment.

**Mr Gentleman**: And could I just say that the community have said to us very clearly, as government, that they want the opportunity to have a look at applications as soon as possible. In fact, they want the proponents to engage in pre-DA consultation. For the authority, an independent authority, to move to a position of looking at whether something would be approvable at a stage prior to going to the community would be completely against what the community has told us in the past.

**THE CHAIR**: I think you are probably misinterpreting what I am saying. From the community's point of view, it is clear they would like to be involved early on, and involved early on in a conversational manner where they are saying, "Yes, this looks like it's going to be okay" or "I hate that pink." They are hoping that this is a conversation of feedback. They do know that there is only one point where they actually can put their comments in, and if they do not put them in, they have no chance of doing anything afterwards. They are spending an awful lot of time, if they are concerned about the development, for whatever reason, going through and trying to find issues with it. And most of them are going with the belief that if it is up on ACTPLA's website it has some level of credence.

**Mr Ponton**: Perhaps we need to improve the communication and make it clear that that is not the case. As I said, it has not been accepted by the planning authority; it has been lodged with the planning authority. By law, we must notify the application in its form because people have the right to test anything. We often see applications that we know have no chance to be approved, but people want to test that, and it is their right to do that.

If what I am hearing is some sort of pre-assessment, I would be suggesting that if the committee were to make a recommendation along those lines, that would require some legislative amendments. There are two aspects of that. First, there is no such

thing in the legislation about pre-assessment, so we would be doing that outside of any statutory framework. Secondly, that would have to occur, and it is a degree of assessment, and it would take some time. And we have statutory time frames for the assessment proper. If we were doing two phases of assessment, we would need to extend the time frames; then that would have an impact on proponents, and we would need to understand that also.

**MR MILLIGAN**: I do not think that we are seeking that it would be approved and that it would be assessed with the information that goes up there. I know that that information goes up there from the developer and the applicant; it is not the authority that is putting it up there. What we are asking is: is there a way that you can ensure that the information that is put up there is at least accurate and the files are named? I know you said that people are not going to sit down and read through the whole document, but if they are referring to a street in Bonner and they have titled it in Harrison, you can clearly see that it has been mistitled.

**Mr Ponton**: Most of those issues are picked up. In terms of what you are seeing and hearing, there is a lot that the pre-DA check does pick up. If we did not do any of that work, we just put it all online, and I am sure my colleagues can attest to this, there would be a whole lot more errors. With what is getting through, our teams—okay, they might be missing the odd thing because they are looking for the document—will pick that up if is obvious and it will not pass.

**MR PARTON**: Does it get down to resourcing?

**Mr Ponton**: What is that?

**MR PARTON**: Does it get down to resourcing, Mr Ponton? If there were more bums on seats—

**Mr Ponton**: Not at all.

**THE CHAIR**: That was the question I was going to ask, but you pretty much answered it before, because you are not planning on doing it.

**MR PARTON**: We are on the same page again, Ms Le Couteur.

**THE CHAIR**: Say there is a development somewhere that I do not like. Maybe it is because of the colour or whatever.

**Mr Ponton**: You would be surprised how many people do not like the colour of buildings, Ms Le Couteur.

**MS ORR**: We would not be surprised at all, Mr Ponton.

**Mr Ponton**: I could talk for hours about the difference between white, off-white and charcoal grey.

**THE CHAIR**: Certainly, and I am not big on pink buildings, but whatever it is.

**MS CHEYNE**: Dusty pink is in; okay?

**MS ORR**: It actually is. I have read articles saying that dusty pink is the next big colour for the next 12 months. So expect every building—

**Mr Gentleman**: It is the 2018 black.

**MR MILLIGAN**: Anyway.

**THE CHAIR**: Personally, I have always quite liked mission brown.

**MS ORR**: You and my dad. My mum is not so keen on it. It caused many fights in my parents' house over the years.

**THE CHAIR**: Assuming there is a building that is being built and it is not in mission brown, so I do not like it, if you had talked to me a day or two ago, I would have assumed that what I needed to do was go through the DA application and find five things or 10 things that, apart from the colour, were actually wrong with it, so that when you looked at it you would go through it and look at my five problems, and maybe you would find some more, and you would say, "No we do not like it."

What I am hearing you say is that I should just put in my comment saying, "It's dusty pink; it should be mission brown. All the other houses on the street are mission brown." And I should not worry at all about anything else, on the assumption that you will find it.

**Mr Ponton**: Yes. "I think it is too high." "I think the colour is wrong." "I do not like the access to sunlight." It is these sorts of issues.

**THE CHAIR**: If the answer comes back and you say that my complaint about mission brown is just so last century and you are not going there, but there was in fact something else where now, when I look at it, I say, "My god; it's also two storeys higher than it should be"—or whatever. Am I then in the situation that all I can do is go to ACAT?

**Mr Ponton**: If we have approved the application and you have objected.

**THE CHAIR**: Yes. I only put in my application saying I do not like it, basically, because I thought you had done all the checking. It comes back; you have approved it; I still do not like it. I look through and I decide that there is something that you missed or something where the information was not given to you accurately. We have had instances where the paper information has clearly been incorrect, and the neighbours would be in a position to know it is incorrect. What if I look at it again after you have said yes and say, "This really is a problem"? If I have left it to that stage, which is, I think, what you are suggesting, what can I do then?

**Mr Ponton**: If there is a third-party right of review, it would be an application to the tribunal.

**THE CHAIR**: That is all I can do.

**Mr Ponton**: Don't get me wrong. If people want to go through and look at every single rule and criterion, we are more than happy for them to do that. What I am saying, though, is that there is no expectation that people do that. We have a team of expert planners, architects, engineers and landscape architects who pore over these applications.

Particularly with the larger, more complex applications, I do not expect somebody who has never read a plan for a 20-storey building before to go through and undertake their own assessment. What they can do is identify issues that will then be a flag for our team to go and look in more detail. If somebody is concerned about the traffic impacts, our team will go and look in more detail. They will engage with the engineers and fully understand that particular issue and then provide a written response to that concern. But if people want to go down that path, it is entirely up to them. All I am saying is that it is not necessary.

**MS ORR**: For clarity, I want to hear from the minister and the director in particular: what is the process that a DA goes through in the ACT? If I brought forward a DA what is the process it will go through?

**Mr Gentleman**: If you are a proponent you would start by having a look at the e-development gateway. You would look at the minimum documentation requirements for lodgement of a development application. Those include, of course, the application form, the letter of authorisation, a statement against relevant criteria, survey certificates, site plan, floor plan, public register floor plan, area plan, section elevations, shadow diagram, composite streetscape elevation, perspectives, colour sample schedule—going to your mission brown—water sensitive urban design, pre-DA community consultation form and report, access and mobility plan, access and mobility report, the bill of quantities and summary of cost, the post occupancy waste management plan, landscape plan, parking plan, turning templates and the traffic report.

Then we go to the tree management plan, tree survey, erosion, sediment control plan, contamination assessment statement, noise management plan, wind assessment, list of interested parties, the valuation report, valuation certificate, subdivision plan, social, cultural and economic impact assessment report—it is not always all of these but this is the majority—hydraulics plan, waste management plan, demolition plan, hazardous material survey, assessment of environment impact, solar plan, environment significance opinion, environment impact statement, driveway plan and landscape management and protection plan after you have had your pre-DA consultation with the community.

**Mr Ponton**: If you want to hear from that point on, I might hand over to Mr Cilliers who deals with development applications on a daily basis. I am sure he would love to go through every step along the way.

**Mr Cilliers**: The issue, I think, starts well before the actual lodgement and submission of a DA. Obviously the first step would be to consider whether you need to engage a consultant or some professional help to lodge your DA.

You will probably ask questions like: do I require pre-lodgement community consultation, depending on the scope of the development? You will then also ask the question about whether you require pre-application advice. If you require pre-application advice you can make an appointment with our gateway team. There will then be a meeting set up for the proponent to come and deliver his concept proposal both to a representative of the gateway team but more so to the involved entities including TCSS, Icon Water, those sorts of people that will attend.

After your pre-application meeting we will provide a record of advice to the person who asked for the meeting. That will be purely advice at that stage and it will be around concepts. We will expect the person then to go back, have regard to those notes and maybe make some adjustments all before he lodges or considers certain things.

Once you get to a stage where you think that you can actually lodge a DA, that you are in a position to lodge a DA, you will compile your documentation in accordance with the documents required that the minister ran through and submit that to the gateway team. The gateway team will then go through the process of checking it for documentary completeness, whether all the documents are there. They do not, at this stage, go through the actual documents to check the validity of the statements or things like that.

There are two options. Obviously you can be failed or passed at this stage. If we fail it, we send out a failure notice to the person who submitted the DA at that stage telling him what additional information is required. Sometimes this can go around two or three times before they get it right, and where—

**MS CHEYNE**: Just to pause you there, what is usually missing when you fail someone?

**Mr Cilliers**: Probably the most common thing is authorities from the land owner and from the interested parties. That is one of the most common things missing.

**MS CHEYNE**: That gives us great confidence.

**Mr Cilliers**: Things like survey certificates are sometimes missing but it could be anything. It could be any range of documents that they missed or—

**MS CHEYNE**: If the scope is such that it requires pre-DA consultation do you also fail them if they do not submit that?

**Mr Cilliers**: We will usually tell the applicant at a stage of a pre-application that they require pre-lodgement consultation. If it is one of those developments that are identified for pre-lodgement consultation we will then at the stage, when we do the checking of the DA before accepting it, decide whether the actual consultation report is included in the documentation before we pass it.

**MS CHEYNE**: But you could fail them if they did not include it?

**Mr Cilliers**: Yes. Once it is passed they get invoiced. Part of the checking we do is to

calculate a DA fee according to our statement of fees. When the DA fee is paid it is deemed lodged from that date onwards.

What happens immediately after lodgement is that the notification process commences right after that. Another thing that happens at the same time is entity referral. All the entities are identified as part of the completeness check and the application gets referred to the entities. The DA then goes to the assessment stream and through the various stages of assessment, as such.

Post the notification period, once the notification period has closed, we can hopefully undertake a final assessment—we are currently trialling a staged assessment process—and we also identify the issues that were raised through representations or submissions received through public notification at that stage.

There may be further information required at that stage by the person undertaking the assessment. We require that information under either section 141 or 144. The difference between the two sections is that section 141 is just clarifying information or receiving additional information, and section 144 is more if you require an amendment of a DA to address certain issues picked up either through entity advice or through the representations received. One of the issues identified from the representations may require it.

Then there is potentially another step for more significant DAs, and that may be consideration by the major projects review group before we can make a decision on it. But that, is in short, a summary.

**Mr Ponton**: Sorry, can I just jump in there and say that there are also some proposals, the larger ones, that may have also been required to go through the design review panel process.

**Mr Cilliers**: Correct.

**MS ORR**: Can you tell me at what points of that process does the community have input, because it sounded like there was more than one point?

**Mr Cilliers**: The community obviously have input at a pre-lodgement consultation phase, if there is pre-lodgement consultation required for the DA. The other obvious point on all merit tracked DAs is the public notification stage, which runs for three weeks, where the community can provide a list of their issues that they identify or those sort of things.

There may also be a further opportunity down the track if the assessment, for example at the initiative of either the applicant or of the authority, is amended. Then there is a legal obligation on the authority to decide whether to renotify that. There is a discretion on the authority to renotify the application. If that gets renotified, obviously the community is again engaged through that process.

**MS ORR**: As a point of clarification, you said they were the two main points, the pre-lodgement and the notification period. We have heard a range of views over all the hearings of what those community inputs would involve and what community

should be bringing forward. Can you clarify for me what the directorate's position is, what the community should be putting in and what those parts are for as far as the community engagement processes are concerned?

**Mr Cilliers**: For the pre-lodgement community consultation there are clear guidelines setting out what the requirements are and what they need to do. I can walk you through that if I need to but I do not think—

**MS ORR**: I have read them. That is okay.

**Mr Cilliers**: And then as part of the actual public notification, as Mr Ponton said, we basically just want to understand what the key issues are that the community are concerned about. That is what we would like a full understanding of before we commence our assessment.

**Mr Ponton**: And if I could just add in relation to the pre-DA consultation guidelines, they are coming up to 12 months and at the time that they were launched I made the commitment that we would review those to see how they have been working. If the feedback is that it is not quite working for community or industry then we will look at whether or not we need to make some adjustments to that.

**MS CHEYNE**: I am not sure if you heard the evidence from Michael Hopkins but we talked about whether some training sessions could perhaps be run with some of the members who are building those bigger sites about what a good pre-DA consultation looks like. I think some people are doing them extraordinarily well but the feedback I am getting is that some of them are still treating it as a bit of a tick and flick exercise.

**Mr Ponton**: Yes.

**MS ORR**: You have identified the notification period for public input that you are after, and I am not going to pick sides; I appreciate that people have different views on what should go on at that point. The information that the directorate is after is issues based, and there are things that they would like the public to identify as requiring particular scrutiny on behalf of the directorate. Pre DA, it sounds like there is a slightly different role. How can we start to get that balance right? What is the difference between the two roles? How do they interact and how can we better communicate that to the community so that they feel they are actually having input at the right point?

**Mr Ponton**: In terms of the pre-DA consultation guidelines, the ambition when I first had those prepared and we consulted on those to make sure that we were hitting the mark was about getting the development industry in particular to understand the benefit for them if they engage very early.

Let us say it is about a six or seven-storey building. I do not want the proponents holding a drop-in session with well-resolved drawings that show that it has X number of apartments and where it says, "This is the floor plate, this is the mix of apartments, this is where the entry will be and this is the landscape design that we're going to submit."

I would like them to go back and say, "This is our block of land; what we would like to do on this block of land is a residential mixed use development, and these are some of the key things that we would like to get out of the block," and start to engage with the community at that very early stage about what is important to them in terms of their local community. They might go back a second time and say, "This is what we heard, this is how we've responded to what you told us and we've started to develop what we need to get out of this site as well." It might be two or three times before you finalise the consultation report which is then submitted to the Planning and Land Authority.

I accept that there are some who are treating this as a "tick and flick" exercise. We thought we would take the approach of these guidelines being reasonably flexible, rather than coming in initially with a great big stick. We wanted to encourage people to understand that the benefit to proponents of doing this is that you spend a little bit of time up front, and you will have a much smoother process once the DA is formally lodged.

**MR PARTON**: It is potentially a massive money-saving exercise, if you want to look at the bottom line, isn't it?

**Mr Ponton**: I have spoken to various industry groups and made that very point to them. If you get your engagement right up front, you can get much faster approval and you may not end up in the tribunal.

**MR PARTON**: Mr Ponton, I think we would be naive to believe that developers would actually genuinely go to the community with a blank canvas. They must have some preconceived idea as to what their development should look like. What we are really talking about here is genuine engagement, but we are also talking about the optics of genuine engagement.

**Mr Ponton**: You are right; it would be naive, and I do not expect developers will say, "Here's my block." That is why I said earlier that they might say, "What we want to get out of this is a mixed use development." They might give an indication of the number of units that they are thinking of. My preference would be at that early stage that they would start to talk about the mix. They might say, "We want X percentage of three bedroom, two bedroom and one bedroom," and start to develop the ideas. But they would clearly have an idea about what they are wanting to get out of the site, and they need to be up-front about that.

**MR PARTON**: There could be a whole change of starting point for the developer.

**Mr Ponton**: Going back to our own engagement, with a different hat on, I will go back to Red Hill. We have talked about this in this committee before. The government went to the community at Red Hill for the redevelopment of the public housing site and said, "There are certain things that we need to get out of this site." We articulated that very clearly, so the community knew, going into this exercise, that there were certain returns that the government was looking for, because it was an asset recycling initiative site. We were really clear about that, but then we talked about the things that were open for discussion. I would expect that any good developer would do the same.

**MR PARTON**: That process has been applauded in this room today.

**MS ORR**: Within that process, because we have heard from a number of witnesses, and it has been raised by Ms Le Couteur as well, there is a view that the assessment should start prior to that notification. Can you clarify for me: when does the assessment start? We have all the pre-DA consultation, there is a completeness check, there is a meeting, a pre-application meeting, then there is the notification, but the assessment does not start until after the notification?

**Mr Ponton**: There is the pre-DA meeting, consultation, the DA is lodged, there are completeness checks, to see whether the basic documents are there; then currently it is notified and our team commence their assessment.

**MS ORR**: There does seem to be a fine line between a completeness check and an assessment, which I think is perhaps not as well understood as it could be. Can you clarify where that line is drawn? What is the completeness check, what is the assessment and where is that line?

**Mr Ponton**: In the simplest terms, I go back to when I first started in this game. Somebody would come to the counter, you would be at the counter and you would go through and check off to see if you had the right documents. The assessment is when you start to read through those documents and apply judgement in terms of whether it complies with the rules and the criteria. That is essentially the difference. One is checking to make sure that the basic material is there. The next is that you start looking at the material.

**MS ORR**: You would not necessarily be proofreading the documents to make sure they have not put Macquarie as opposed to Moncrieff?

**Mr Ponton**: No. But if that was identified in the completeness, if it was obvious then, absolutely.

**MS ORR**: But there is no requirement for it to be undertaken?

**Mr Ponton**: If it was on the front page, it would be picked up; if it was on page 32, it would not be picked up until the assessment.

**MS CHEYNE**: On the pre-DA consultations, again, I appreciate that those guidelines are for bigger-scale developments. I am certainly not suggesting that we expand who those guidelines are applied to. Mr Parton and I were just reflecting that a lot of what we have been hearing has not been about the processes with big developments—Geocon or others, and government getting it wrong there and the process not being great there—

**Mr Ponton**: We never get it wrong, do we?

**MS CHEYNE**: Or not getting it wrong. You know what I mean. It has been more the smaller scale, increasing density of development in suburbia that we have largely been hearing about. Would it be possible not to do mandatory pre-DA consultation, but for the government to develop something that was like best practice? You do not have to

do a pre-DA consultation with the neighbours, but if you have a massive 2,000 square metre block of land and you are going to change it from one house to 12 townhouses, "Here are some best practice guidelines or checklists that we think that you could go through that would make everyone a little happier and the process a little smoother."

**Mr Ponton**: Sure, that is absolutely possible. As part of the review of the pre-DA consultation guidelines, it may be that we will also look at the thresholds that we have established for those. We may need to adjust those based on the past 12 months of experience. Mr Cilliers particularly will be able to give advice to me about where somebody has just been under the threshold; therefore has that actually generated a bit of anxiety within the community? Should we then look to be lowering the threshold for particular types of development?

**MR PARTON**: Where are those thresholds now?

**Mr Gentleman**: Three or more storeys with 15 or more dwellings, a building with a gross floor area of more than 5,000 square metres, a development with more than one building and the buildings have a total gross floor area of more than 7,000 square metres, a building or structure of more than 25 metres above the finished ground level or triggered by a variation of the lease to remove its concessional status.

**Mr Ponton**: It is any one of those. Because it was the first time that we had established these guidelines, we had to make a call as to what the threshold would be, and we will review that over the coming months.

**MR MILLIGAN**: My question is in relation to the pre-DA process. In your submission, under heritage, you have stated that any DAs that relate to heritage places and objects, subject to the provisions of the Heritage Act, are referred to the Heritage Council for advisory. Is there a statutory time frame that is applied to them to make an assessment and get back?

**Mr Ponton**: Yes.

**MR MILLIGAN**: What is that?

**Mr Ponton**: Fifteen working days.

**MR MILLIGAN**: And that is during the pre-DA process?

**Mr Ponton**: Sorry, that is during the formal—

**MR MILLIGAN**: Formal DA?

**Mr Ponton**: Formal referral, yes. During pre-DA we would not have a role in referring that to the Heritage Council. It would be for the proponent to make their own inquiries of the Heritage Council. Once it is submitted with the Planning and Land Authority, then, as we notify the application, we also undertake referrals. There are referrals to the Heritage Council, Transport Canberra, city services, Icon, Evo and the like.

**MR MILLIGAN**: In other words, if there is a proposal that is being worked on from the community but the Heritage Council has put some concerns, let us say, regarding a particular site, is there a time frame if something needs to be resolved by the Heritage Council, or can it go on for as long as they take to assess?

**Mr Ponton**: If the Heritage Council, during the formal assessment process, has identified concerns, that forms part of the assessment. I would expect that, depending on the nature of the issue that is being raised, if the planning authority has determined that that is a gap, we would ask for further information. That does add time onto the statutory processing time.

Keep in mind, too, that with the statutory processing time we do not make a decision just to achieve that time frame. If we need to continue to go backwards and forwards to get the right outcome, we will go over the statutory time frame. That simply means that during our annual reporting period—we have had this conversation with this committee before about the 75 per cent within time—we identify them. The ones that go out of time tend to be the ones that have identified issues. Then we do need to go backwards and forwards to resolve those issues. If we cannot, the application will be refused.

**MR MILLIGAN**: I am not sure if I can mention a particular case here.

**MS CHEYNE**: Is it before ACAT?

**MR MILLIGAN**: No, it is not.

**THE CHAIR**: As long as it is not defamatory.

**MR MILLIGAN**: No, I would not think so.

**Mr Ponton**: If you could talk about it generically it is probably better, I think.

**MR MILLIGAN**: A community has put together a proposal to build an outdoor centre in an area. They have consulted with the community and put together a proposal. The government has given their support, but then the Heritage Council has come along and put in an objection and suggested that there might be some Indigenous artefacts in that location. That has been stalled for the past two years. They have not put in a DA because of that process that is currently underway now. My question is: how can that process have been going on for the past two years without any sort of resolution in place?

**Mr Ponton**: From what I am hearing, it is not yet within the DA system?

**MR MILLIGAN**: No; it is not within that DA—

**Mr Ponton**: Therefore, there is no role for planning in that regard.

**MR MILLIGAN**: Right.

**Mr Ponton**: If the proponent was wanting to test the advice of the Heritage Council,

then, coming back to our earlier point about the right of a proponent to lodge an application, ideally you would resolve all of the issues that you know exist before you lodge an application.

If you are at a point, as a proponent, where you want to test that, the assessment process would run its course. We would receive the informal advice from the Heritage Council. The Planning and Land Authority would need to determine whether or not that advice required further information, whether it would need to refuse the application or approve the application, and anything inconsistent with the advice of the Heritage Council under section 119 of the act. If it was refused, it would go to the tribunal and again could be tested further.

In that particular case, it sounds to me as though the proponent is trying to work with the Heritage Council to resolve the issue. If they cannot, they could seek to have that tested through the application process and ultimately through the courts.

**MR MILLIGAN**: By actually submitting the DA?

**Mr Ponton**: That is right.

**MR MILLIGAN**: Right.

**Mr Ponton**: That is the formal process: to have that tested and have a decision. Any decision is then appellable.

**MS CHEYNE**: I have questions about access to DAs, both physically and also mentally. How you comprehend DAs is where I am going with it. I heard in the minister's opening statement what I think is good news about an upgraded website coming and that maybe some DAs will stay online a little longer. Is it included in that, potentially, that the reasons for decisions will also go up online?

**Mr Gentleman**: The e-development portal we were talking about.

**Mr Ponton**: Yes. At the moment, all decisions and the reasons for the decision are publicly available.

**MS CHEYNE**: Yes, but not on the website.

**Mr Ponton**: As to whether those decisions are published, I might talk to my colleagues.

**MS CHEYNE**: They are not. I can tell you now.

**THE CHAIR**: No; we can tell you that.

**Mr Ponton**: I know they are not. But whether there is an intention to do that has not come up to me yet.

**Mr Phillips**: One of the points of the new e-dev is to put on as much information as possible that is publicly available. It is intended that the NODs will be available.

**MS CHEYNE**: The what, sorry?

**Mr Phillips**: The notices of decision will be available online.

**MS CHEYNE**: Including the reasons for decision? Okay. That is certainly something that we have heard both in other hearings and also during this inquiry: that if there are similar blocks that people could look to, that could help them in terms of going, "That is probably going to be approved because of X, Y, Z." It will reduce quite a bit of anxiety. So that is good to know.

There has been a bit of talk about the DA finder app. I know that version 2 was released a bit over a year ago. What has been the take-up rate for the DA finder app? Do you have more and more people using it? We have, I think, one, Red Hill regenerators, who—

**THE CHAIR**: Just discovered it.

**MS CHEYNE**: They were not aware of it, but now are, thanks to this inquiry. So I expect to—

**MR PARTON**: And walking around town like this now.

**MS CHEYNE**: That is right. I expect that the number of people downloading the app are just going to balloon. I am interested in whether it is tens of people or hundreds of people. And are people using it?

**Mr Phillips**: Ms Cheyne, there are currently over 3,500 people who have downloaded it. It is a pretty reasonable take-up.

**MS CHEYNE**: That is good.

**Mr Phillips**: The current work that will be going on, and the next expense, will be a slight reconfigure and licence fees to put it on the new smartphone platforms that Apple are developing. With version 3, the intention will be that it will be more linked into e-development and will contain more information. For example, minor DAs would be searched as well. With each version, we receive the feedback and we look at how we can improve with each version.

**MS CHEYNE**: When is version 3 coming?

**Mr Phillips**: It will be coming around the time of the e-dev switch-on.

**MS CHEYNE**: When is that?

**Mr Phillips**: Towards the end of the financial year.

**MS CHEYNE**: Okay. A bit of time to wait.

**Mr Rutledge**: The DA app has proven to be more successful than we envisaged and

we have a got lot more feedback on its use and functionality than we thought we would. It is fair to say that when we embarked on the project we did not invest heavily in it because we thought it was something that would be of interest to some people. It was a small investment, almost a pilot-type investment mentality. We have found that not only is it well used—3,500 as Mr Phillips said—but the expectation from the community is that the DA app will be almost as functional as the website and have all of the documentation.

The idea was that you are walking down the street, you see something going on, you do it and then when you are back in the office or back at home you get on the computer and do it. But as mobile technology becomes more and more pervasive, there is a greater expectation in the community. We have now tried to catch up a little bit, but in that context we probably could have done a lot more thinking at the beginning and a hell of a lot more investment and we would have ended up with a better product.

We are building and learning as we are going. As Mr Phillips said, every new version will try to address the feedback that we are hearing, but we have a long way to catch up to where people expect government online services in a tablet format to be. So that will require both a lot of thinking and potentially new resources and investment.

**MS CHEYNE**: We have previously spoken about how that app in some ways has more functionality than the website because on the app you can see where all the live DAs are but on the website it is just a list. Will the new e-dev change that so that regardless of whether you are on a desktop or on the app you will get a similar user experience?

**Mr Rutledge**: I do not want to over promise on this because every time we deliver something expectations rise even higher.

**Mr Gentleman**: If members of the public want to see what is occurring on a map situation I would suggest they look at the DA finder. Once you tick on the particular location the application will take you directly to the plans online. So it will take you to e-development and you can look at all of the plans online.

**MS CHEYNE**: More people still seem to have computers than smart phones, but that is good news. I might make some recommendations.

Talking about DA comprehension and accessibility but less so physical, who determines the names of the files on DAs? I know that sounds silly, but some of them are called “Site plan”, “Site plan”, “Site plan”, “Site plan”, “Site plan”, “Site plan”, and I have to open them all to find out what exactly I am looking for. I look at plans all the time so I cannot imagine what people who by and large only ever engage in one or a few DAs must think of that.

**Mr Ponton**: That is a certainly good feedback. If you are interested, there is a naming convention for the files. Under our standard operating procedures we have naming conventions and the idea is to provide consistency. In the early days as we moved to our electronic document management system people entering information were calling each file “Site plan 1”, and another person was calling it something else. So

there is a naming convention, but if it is complicated I am happy to revisit that. It is something I have not looked at for probably 10 years or so.

**MS CHEYNE**: I cannot tell you how bad it is.

**Mr Ponton**: I guess we are used to it now, so good feedback.

**MS CHEYNE**: Often there is a URL next to it and if you scan through that it might be "Site plan master plan". And you go, "Maybe that's what I want rather than 'Site plan floor plan'". But the actual thing that you are clicking on is "Site plan", "Site plan", "Site plan". Anyway, that is an example.

**Mr Ponton**: We can provide you with the naming conventions.

**MS CHEYNE**: That would help me in the meantime, but I certainly will be putting a recommendation that they be reviewed. More broadly, we have had some feedback that a lot of people in the community are interested in engaging with DAs, whether it is for the block next door to them or a bigger site. Again, it is not something people really want to do as a hobby, but we have heard that some people spend an inordinate amount of time trying to understand things. This is clearly also taking up a lot of officials' time as well through being on the phone answering queries: "Please explain this to me. What other documentation do I need?"

I know there are overhauls elsewhere in the planning space. Is any sort of overhaul planned for how we can use plain English in communicating decisions and information to assist people, whether they are submitting a DA, putting in a comment about a DA or reading a notice of decision?

**Mr Ponton**: My colleagues might have a view, but my initial response to that question is that much of what we need is technical information. By its very nature for the layperson it is not necessarily going to be easy to understand. We try to have some of the documentation—the site plan, the elevations, the floorplans—easily consumable, but there is a need for more technical information.

As an example, for a traffic report there will be an executive summary and we would expect a layperson to read through the executive summary if they are interested in traffic but not to try to understand the model that was used to come up with the numbers. As I was saying earlier, the layperson can then think, "Based on what I've read in the executive summary, I'm concerned that there are going to be too many cars at this intersection," and provide that as a comment without having to say, "And I think this because I have interrogated the model and the model says this."

Providing a document that simplifies applications is certainly something we could look at, but the information is there because as professionals we need it to make a proper assessment.

**MS CHEYNE**: Is there some half way point of "How to interpret plans 101" or "Here are some things to look for" that might help people interpret plans? When you first click on something being built on your street, you open it up and there are all these documents. Then you start to click on them and if you have never looked at a plan in

your life I just wonder if there is something in that space that could assist like, "Here's your handy guide to DAs and things you might want to look for if you're wanting to put in a submission," or "Here's how to read a traffic study report," or something.

**Mr Ponton**: We would certainly consider that and think about some options.

**MR PARTON**: I do not know whether to talk about certifiers or retrospective DAs.

**MS CHEYNE**: Retrospective.

**MR PARTON**: You reckon? No, I want to talk about certifiers because this has come up time and time again from a number of people giving evidence to this inquiry. It certainly does play a role in the DA process. I think from the perspective of many who have spoken to this inquiry, their position is: what is the point of certifiers and certification? If the builder has hired the certifier and it is pretty much like turning up to a football match with your own umpire, what is the point?

I know that one of the submissions today suggested there should be a cost analysis undertaken to determine whether it would be less expensive for the government to revert to full government inspection of all developments, full government certification at developer expense, and just do away with private certifiers. Can I get some feedback?

**Mr Gentleman**: Yes, certainly. I will kick off. Firstly, the history of certification is that it was done within government at a point.

**MR PARTON**: Of course.

**Mr Gentleman**: The industry felt that government was not performing. They wanted to have it done in the private sector. The community supported that. There was a decision made for certification to become private. Of course, the process is that when you are doing a development, you select a builder. You then select a certifier as well. They are supposed to be at separate places. But what occurs, as you have indicated, is that sometimes the builder will identify a certifier and say, for example, "In this process I think you should go with this certifier."

On many occasions the proponent is unaware that they could be linked. They do not have the full capacity to understand that they should choose a separate certifier, for example. Either way, though, the certifier is supposed to do that particular job certification in the correct way.

We have heard reports that that is not being done properly. Of course, that is why we have started a process of ensuring that builders, in obtaining their licence, must do the right thing and listen to certifiers. I will say, though, that at this point that process and certification now sits with Minister Ramsay in his directorate.

However, we still have some knowledge—a great deal of knowledge—on how certification works. I will stop at this point and I will ask the directorate to give you more detail on that.

**Mr Ponton**: Thank you, minister. I will kick off on that one. On the first point in terms of employment of certifiers, as the minister said we certainly have heard that some builders will recommend particular certifiers that they have worked with in the past. It is important to note, though, that it is not the builder who appoints the certifier. The directorate and also Access Canberra have done quite a bit of work over the past six to 12 months to educate people who are moving into this space—people who are interested in building a home—that it is their responsibility to appoint a certifier. So there may be a recommendation but they can go with somebody else.

The form has been amended to make it abundantly clear that the certifier works for the owner, not the builder. As I said, there has been some communication and there is more to be done. But if you have suggestions about what else we can do in that space, happy to hear that. That is the first point I would make.

The second point is in relation to certifiers and their role in the DA system. In fact, their role is when a DA is not required. You would have heard in earlier evidence, I think on Monday, discussion around exempt code and merit track applications. Presumably you are aware of what the differences are in those.

In terms of code applications, single dwelling houses in residential zones were originally code applications. So they were all being dealt with by the planning authority. You needed to come to the planning authority. Essentially, you would go through some pretty basic rules. What is the height? What is the setback? What is the plot ratio? Those sorts of things.

Given that they were considered to be straightforward, the decision was made—there was certainly consultation at the time—quite a number of years ago. I think it was about 2009. The decision was made to move those from code track to exempt. But somebody still has to make the call and go through and make sure that it meets the minimum rules for a single dwelling.

The decision was made that certifiers could do that because they would be issuing the building approval also. But it is not just building certifiers who can do that. You can also engage a town planner. There are other people who can be registered to undertake that work.

**MR PARTON**: Look, I am pleased to hear it. I have not built a home recently. So I am pleased to hear about that education program because ultimately if everyone was fully aware that you would be better off appointing an umpire who is a genuine umpire, that is probably what they would do.

**Mr Ponton**: I think that is probably the key point that I would want to make. We have been doing work and that work will continue. We will work with building policy whilst Minister Ramsay sits within this directorate and we work very closely with our colleagues in Access Canberra. We will continue to make sure that that education continues so that people know that, yes, they appoint the certifier.

**MS ORR**: Mr Ponton, can you give some example of what exempt developments would be?

**Mr Ponton**: The most significant exempt development would be a single dwelling in a residential zone. There have been suggestions over the past couple of years that they could move into multi-unit development. The government has resisted that because we are hearing that there is still some concern about single dwellings. The government has certainly not given me any direction to explore going beyond single dwellings because there is more work to be done in relation to that aspect.

Other exempt developments are—technically, if you apply the planning and development app to the letter of the law, if you wanted to change the colour of your home you would need a development approval. So there is a standard exemption that you do not need to seek approval to—

**Mr Gentleman**: I am going to ask them to look at whether mission brown can be excluded from the colour palate.

**MR MILLIGAN**: Was there a dirty pink?

**Mr Ponton**: Dusty pink.

**THE CHAIR**: Dusty pink.

**Mr Ponton**: Alterations and additions, if they meet certain requirements, would be exempt. For the smaller items, the regulation itself contains the exemption criteria so a garden shed, retaining walls of a certain height, those sort of things. For single dwellings, they need to make reference back to the single dwelling housing code under the Territory Plan.

**THE CHAIR**: Continuing on exempt, we have had some evidence from people where a building was built which was claimed to be exempt and that they believe was not exempt for various reasons. They got to the situation where there is not anywhere for them to go. Where can they go? There has been no DA lodged. The certifier says it is exempt. The certifier does not reply to them. Where can they go?

**Mr Ponton**: Access Canberra. If they go to Access Canberra and say, "I have a concern about this home, they can lodge a complaint and that will be investigated."

**THE CHAIR**: The evidence has been that that has not been a particularly successful form of intervention, but that is all they can do.

**Mr Ponton**: In terms of the number of complaints lodged and processed, I am certainly aware that there has been a significant number of complaints lodged over the past number of years. I do not have the detail in terms of how they were resolved. But certainly that would be the right course.

Mr Cilliers might even be able to comment. As a result of Access Canberra investigations, matters are then often referred to the DA process for retrospective approvals, if in fact it is determined that the house ought not to have been exempt. Then Access Canberra can, through the Construction Occupations Registrar, take separate action against the certifier in terms of their licence.

**THE CHAIR**: Yes, that is not usually the action that people are looking for. They want something to happen in respect of the things that are happening next door.

**Mr Ponton**: And that also happens. There is a number of avenues. One avenue is dealing with the building that is under construction. As the minister said, they include a stop-work notice or seeking to rectify, either to alter or to seek retrospective approval. But then there is another mechanism where you deal with the licensee themselves for having made a mistake.

**THE CHAIR**: This is probably going to be a question on notice, but you said "seek to rectify". How many actual rectification orders have been issued? I have asked this in the past and it seems that the answer is very low.

**Mr Ponton**: That would be a matter for our colleagues in Access Canberra, but we can certainly seek to obtain that information for you.

**THE CHAIR**: Right. I guess that in terms of numbers of complaints we should ask them directly. Minister, earlier we were talking about ACTPLA looking at all the rules and criteria during the assessment period so that the public should not be concerned about doing that work themselves. However, there have been a number of appeals to ACAT that have revealed a number of instances where ACAT was not of the belief that ACTPLA correctly interpreted the rules and criteria.

We actually have heard a lot of evidence from people feeling they did not have a lot of trust. How can people be assured that ACTPLA is going to correctly evaluate all the rules and criteria, particularly the zone objectives that are somewhat subjective?

**Mr Ponton**: The first comment that I would make, Ms Le Couteur, is, again, I would come back to terminology. You made reference to the planning authority not correctly applying the requirements of the Territory Plan. That is not what ACAT has found in those particular instances.

What has happened is that the tribunal, which is required to stand in the shoes of the Planning and Land Authority as the decision-maker, has formed a different view. I have read articles and heard people talk about the planning authority not applying the rules. That is not the case. In fact, the tribunal does not consider the rules of the Territory Plan because compliance against the rules is not a matter that the tribunal can consider. It considers the criteria. The criteria, by their very nature, are subjective and they require professional judgement.

In the case of those very few matters—I point out that it is a small number of matters—where the tribunal has considered a matter, applied the criteria and formed a different view, it is exactly that. The tribunal has applied its judgement, based on the evidence before it, and has formed a different view. But it does not mean that the planning authority's decision was wrong. It simply means that somebody formed a different view. And that is planning.

The very nature of planning, when you start to apply professional judgement, is that one planner who considers all the evidence might form a different view from another planner. Then it is the role of the tribunal to form a view. Then it is open to the

proponent, who thinks the tribunal's view is not the correct view, to apply to the Supreme Court. We have seen examples where the Supreme Court has formed an alternative view. Sometimes it is a different view altogether again. So it is about applying that professional judgement. That is both the legal system and the planning system.

It is a bit like the Director of Public Prosecutions bringing an action against an individual who, based the evidence before them, they believe has broken the law. The natural process is then for the court to consider all the evidence and make a determination. That determination might be different from what the Director of Prosecutions has formed. It is similar in planning. A decision is made based on the assessment against the criteria and it is open to somebody to form a different view. But it is not that it is correct or incorrect.

**THE CHAIR**: Talking again about ACAT, I understand that there is a process before the actual legal part that you go through, a mediation process—

**Mr Ponton**: That is correct, yes.

**THE CHAIR**: Can you talk a bit more about that and also about the barriers to entry—you have got to prove material detriment—and how that works?

**Mr Ponton**: I will start off, then I will ask Mr Cilliers, who spends a lot more time at the tribunal than I do now, to answer. In terms of mediation—actually I will go back a step. In terms of material detriment, that is a requirement within the legislation that, for somebody to bring an action, a third party to bring an action, they do need to demonstrate a material detriment. I will ask Mr Cilliers to talk more about the case law around that. That was introduced back in around 2007.

You might have somebody who lived in Tuggeranong who, for whatever reason, just did not like a development in Gungahlin, and could take an action. We were seeing these sorts of actions. Therefore that provision was incorporated to make sure that there was a real and valid interest in the particular proposal.

In terms of mediation, once an action is brought all parties usually spend a day, possibly two, to work through the various issues and to see whether or not agreement can be reached between the objector, the proponent and the Planning and Land Authority before we get to potentially two, three or four days of hearings.

**THE CHAIR**: Whom is that facilitated or run by?

**Mr Ponton**: The tribunal appoints a professional mediator. But I will ask Mr Cilliers to talk a little more about both of those.

**Mr Cilliers**: The material detriment is actually just a test of giving somebody standing at a tribunal. That is something for the tribunal. They are sometimes incorporated into the directions hearing but more commonly at an interlocutory hearing. It is a little, short, separate hearing just to hear that matter.

It may be the case that more than two parties, the applicant and the respondent, are

involved and that one of the parties may feel that the person who brought the application does not have standing, for various reasons. The tribunal will consider those reasons and make a decision.

The mediation process that precedes the hearing happens just after the directions hearing, usually within two weeks from a directions hearing. Normally a day is set aside and the tribunal appoints a professional mediator. Mediation sessions are confidential.

The role of the Planning and Land Authority is to assist the tribunal in sharing whatever agreement the parties can come to. The Planning and Land Authority itself may be a party to it if it is a refusal, in other words, a first-party appeal, we have refused the decision. Then the Planning and Land Authority takes a step back and ensures that the decision that the parties reached agreement on, if they reach agreement, can actually be lawfully made. If they reach agreement, that decision or that agreement is then handed to the tribunal to make orders. The tribunal will consider it before making orders.

The mediation process is particularly successful, I find, in our jurisdiction. I think it is in excess of 60 per cent of the matters that we let our appeal get settled through mediation prior to going to hearing. But it is an opportunity for the parties to engage with each other without the constraints of the formal process or hearing—those sorts of things—to have an open discussion about their issues and try to seek some common ground. Part of that decision will be also to put down conditions similar to those of the decision.

**MS ORR**: This is on a different topic but one we have spoken about, exempt DAs. I want to get a better understanding. We have heard various witnesses indicate that they have been consulted or have not been consulted. What consultation requirements are there for, say, a single-dwelling house that can potentially be exempt from a DA, as opposed to a development that would? Can you clarify for me so that it is clear?

**Mr Ponton**: I will turn to Mr Cilliers but my understanding is that the neighbours are required to be notified seven days before—I have clearly got it wrong. I will hand over to Mr Cilliers.

**Mr Cilliers**: Exempt DA, as part of the DA process, requires that you will be notified as part of the exemption itself. There may be a case where we are approached for what we call an exempt declaration, where there is a minor departure. That is certified. They only relate to things like front, side and rear setbacks—envelopes and private open space requirements.

In those cases the certifier or the crown lessee can approach the planning authority and request that we make a declaration that it is actually exempt. The test for that is whether the matter is actually minor and whether anybody else, other than the applicant, is adversely affected by it, and also not increasing the environmental impact of it. Sometimes, as part of that process to get to the second test of somebody adversely affected other than the applicant, we may request or suggest to the proponent that it may be useful to get support from your neighbour who is affected.

**MS ORR**: And that is the point because, I think, where this issues has come up, there have been issues around neighbours wanting to comment on what is going on within their street.

**Mr Ponton**: In terms of my earlier comment that that notification is notification that works are going to commence and that is through the building approval process, the certifier, having determined that the development is exempt, is required then to notify the neighbours before construction commences.

**MS ORR**: There is still a point in the process when they can raise their concern. That is what I am trying—

**Mr Ponton**: No. When it is exempt development, it is notification that works are going to commence. That was introduced a number of years ago because people would be heading off to work and they would come back in the afternoon and the house next door would have been demolished. "What's going on?" It gives people seven days—I think it is seven days—notice that the work is going to happen. But it is not consultation at that point. Because it is exempt it is notification.

**MS ORR**: But there is an encouragement for you to go and talk to them?

**Mr Cilliers**: Only in the case of an exempt declaration if they seek a declaration from the Planning and Land Authority. And that is just to satisfy the test for adversely affecting anybody else. Obviously if they cannot provide that sort of support then we will point them to a merit track DA, a full-blown DA.

**MR PARTON**: The Planning Institute of Australia ran some workshops in the lead-up to making their submission and they suggested that they considered that the number of retrospective DAs was increasing, that this was a result of proponents simply undertaking some activity that should have been subject to a DA but that avoided the DA process. This is what their workshop suggested.

They said—and these are the comments that I am hoping we can get a reflection on, and in a brief time—there is common knowledge among the development industry that the ACT government is not strong on compliance. The DA compliance team is within Access Canberra, not within ACTPLA, and this may give rise to the belief that proponents can risk any compliance action against works undertaken without approval.

Can I get someone to reflect on that—whether it is the minister or—

**Mr Gentleman**: Yes. I will give you the situation with the retrospective DA applications. Under section 205 of the act the lessee of land where development was undertaken without approval may apply for approval of the development. It has got to be treated by the authority as if the development had not been undertaken. Under the standard DA process set out in the act there is an additional requirement for retrospective DAs that the application is to be accompanied by the plan of the development, prepared by the registered surveyor, setting out the dimensions of development on the site.

In the 2017-18 financial year 42 DAs answered yes to the question, "Have works been

undertaken without approval?" This represents 3.4 per cent of the overall applications lodged. Of the 42 applications, 28 were approved subject to conditions, two were refused, one was withdrawn and 11 have yet to be determined. If a development is constructed and a DA does not subsequently receive approval the matter is referred to Access Canberra for compliance and consideration.

**MR PARTON**: The entire number of retrospective DAs in that calendar year was how many?

**Mr Gentleman**: Forty-two applications. As I said, 28 were approved subject to some conditions, two were refused, one was withdrawn and 11 are yet to be determined.

**MR PARTON**: I am sure we have had discussion on this in the past. I do not know who it was but someone suggested that there have been some that have been either fully or partly demolished as a consequence of not being approved.

**Mr Phillips**: There have been two retrospective DAs refused over the last recent history. Both of them have been subject to compliance activity after the refusal by Access Canberra.

**MR PARTON**: I do not understand. What does that mean?

**THE CHAIR**: What does that mean in English?

**Mr Phillips**: My understanding is that one resulted in a partial demolition. The other one related to a home business on the premises. That business had to relocate.

**Mr Ponton**: I am aware of a number that have been refused. It tends to be partial demolition rather than full demolition. I can think of a parapet that was slightly too high. They had to cut the parapet down.

**MR PARTON**: Would you reject the implication that builders are saying, "We can build it, it doesn't matter, they won't get us to knock it down"?

**Mr Ponton**: I would suggest the numbers speak for themselves.

**Mr Phillips**: If I may, in the past five years, from 2013-14, 43 retrospective DAs; 38 the following year, 27, 38, 42—about the same each year.

**MR PARTON**: Certainly the feedback suggested it was thousands.

**THE CHAIR**: Gentlemen, thank you very much. It is five o'clock. We have come to the end of the hearing. I certainly have quite a number of questions that I have not got to yet. I imagine other members of the committee may have. The secretary has reminded me that the government responded that Minister Gentlemen would be able to represent the entire ACT government. I know that we have touched upon Access Canberra already, and I certainly have more questions that relate to that. I believe other members do.

**Mr Gentleman**: If it assists the committee, I am very happy for officials to come

back and answer those questions for you.

**THE CHAIR**: You would be happy to have a second hearing, is that what you are saying?

**Mr Gentleman**: For officials, yes.

**Mr Ponton**: Yes, if that would help.

**THE CHAIR**: We will have to have a chat about that. But you can anticipate our questions. We may or may not be able to accommodate that. Minister Gentlemen, there will be either questions or hearings or, if we are really lucky, both, I think.

Meanwhile, *Hansard* will be sent to you as per normal. One question was actually taken on notice during this hearing.

**Mr Gentleman**: Well done.

**THE CHAIR**: It was just that we did not have enough time to ask them all. Please reply within five days. We will send questions to you. The committee's hearing for today is adjourned. Thank you, all.

**The committee adjourned at 5.03 pm.**