LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL

(Reference: Draft variation No 350: changes to the definition of "single dwelling block")

Members:

MS C LE COUTEUR (Chair)
MS S ORR (Deputy Chair)
MR M PARTON

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 5 DECEMBER 2018

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 2.01 pm.

BERRY, MISS ASHLEE, Director, Legal and Compliance, Master Builders Association of the ACT
JACKSON, MS NICHELLE, Director, Canberra Town Planning

THE CHAIR: Welcome to this public hearing of the Standing Committee on Planning and Urban Renewal inquiry into draft variation No 350, changes to the definition of "single dwelling block". Today we are hearing from the MBA, Friends of Hawker Village, and Mr Peter Young.

Proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live. You will see there is a pink privilege statement. Can you please have a look at that and confirm for the record that you understand and agree with it?

Ms Berry: I confirm that I have read the privilege statement and agree with the contents.

Ms Jackson: I also confirm that I have read the statement and understand its contents.

THE CHAIR: Thank you. Before we go to questions, do you have an initial statement that you would like to make?

Ms Berry: I do, thank you. Thank you for allowing the MBA to speak to the committee today. We represent the builders, subcontractors and professionals who are members of the MBA and either will be or have already been impacted by the implementation of DV 350, with its interim effect. Appearing with me today is Nichelle Jackson from Canberra Town Planning, a member of the MBA.

As outlined in our submissions made to the inquiry, the MBA are concerned about the impact of the implementation of DV 350 on our members. In summary, the interim effect provisions have not taken into consideration those people who may have been in the planning stages, who may have been heavily invested in designs prior to the change, only to find out that they will need to now start the process again to comply with the new definitions.

The MBA outlined in our submissions that when the ACT government is considering implementing these changes we would request not just industry consultation but a transition period to ensure that people who have been working to a certain definition or a certain Territory Plan do have an opportunity to lodge their development application and are not prejudiced by a change in those rules. I note that the government has done something similar with changes to, for example, the lease variation charge, where there was a transition period.

I want to comment that in our submissions we have not touched on the policy impact of DV 350—that is, whether or not fewer infill dwellings should be permitted—because we note that government is consulting separately on the housing choices discussion paper, and we understand this will be a significant issue addressed in a

review in 2019.

THE CHAIR: Thank you. You may not be able to answer this, but have you any idea how many blocks we are talking about here? I anticipate asking government as well.

Ms Berry: Perhaps Nichelle would be in the best position to answer that.

Ms Jackson: I am not in the best position to give an accurate number here, but I would estimate that the blocks that would have the most significant impact as a result of this draft variation would be predominantly RZ2-zoned blocks, which are suburban residential. I cannot tell you at this stage the proportion of blocks that have an RZ2 zoning; however, these are the blocks that would be most affected. I do have specific examples of clients that I have been working with that have suffered unintended consequences as a result of this change.

THE CHAIR: We are aware that the reason, presumably, for the date in the second definition is that, with all the leases before that, they are all paid for and there does not appear to be any easy way to find out how many blocks could be affected by this, which is obviously a really key question. If there are only the ones that your clients are currently working on, it is one situation; if there are a number then it is different. As you would be aware, the government has reworded the proposed definition since the first consultation. Has that fixed any of your problems?

Ms Jackson: It has not fixed any of the problems because the applications that we had submitted at the time are still subject to the requirements of the interpretation of this definition and, therefore, the people that were affected did not have the opportunity to submit a design proposal that would have complied with the previous definition. They now are subject to the new definition and are prejudiced by the interpretation of that.

THE CHAIR: Thank you.

MS ORR: You referred to the submissions that you have made. Can you clarify what those submissions are?

Ms Jackson: I am talking about development application submissions to EPSDD, the Environment, Planning and Sustainable Development Directorate. These would be for the assessment of proposals subject to that definition under DV 350.

MR PARTON: How many of your members and/or clients are we talking about here that, to your knowledge, are affected by this change in regard to being on track to do a multi-dwelling development and, all of a sudden, according to this, not being able to? How many are we talking about?

Ms Berry: Personally, I have received calls from four or five specific members that were intending to build a certain number of townhouses or close dwellings and have now been advised by their planner that it is three or one less. I am sure that Nichelle can add more to that, because they are dealing with the actual applications.

Ms Jackson: Correct. I have been dealing with probably in the same realm of four or five different clients who have been caught up in this process.

MR PARTON: Are we talking about the same four or five here or are they different?

Ms Berry: Not necessarily.

Ms Jackson: Not necessarily.

MR PARTON: We are generally speaking about a small number who had advanced to a certain point and all of a sudden the interim effect came in and they had to cease. I know there are a huge number of variables here, but I am trying to get an understanding of the financial impact for those individuals or companies, bearing in mind that they did not see this coming and none of it is their fault. I just want to understand what sort of financial impact we are talking about.

Ms Berry: There is a certain example that Nichelle and I were discussing.

Ms Jackson: Yes. There is a certain example that I could perhaps put some theoretical numbers to; I cannot disclose the pure details.

MR PARTON: Of course.

Ms Jackson: I am speculating here, but, for example, there was a block that a client of mine had purchased on the assumption that they could develop up to four dwellings. There was a financial target associated with being able to develop four dwellings. They can now only develop three dwellings, so the value of that block would be proportionately less on the basis that only three dwellings could be developed. They have purchased, however, on the basis of four dwellings. So they stand to make a loss on the profit that they would have received from completing a development of four dwellings.

MS ORR: Is that the example that is in the submission?

Ms Jackson: It is a different example in the submission to the one that I am describing now.

MR PARTON: When you say they will take a loss, you are saying that they will take a loss as compared to the original result? You are not talking about a red number as opposed to a black number here, are you? Obviously there is going to be loss.

Ms Jackson: That is right.

MR PARTON: I am trying to understand what sorts of numbers we are talking about; that is what I am trying to drill down to. How much money will individuals effectively lose through no fault of their own, with no prior warning that this was happening?

Ms Jackson: To answer that question in as concrete terms as I can muster, the value of one single dwelling would be the difference in costs incurred as a result of this change. So with one single dwelling, depending on where you are in Canberra, whatever the value of that one dwelling would be is the realm of costs incurred.

MR PARTON: For us and those watching, Ms Berry, are you prepared to ballpark that figure, just so that we know what we are talking about?

Ms Berry: If we are talking about a two to three-bedroom townhouse, that would be the equivalent of $500,000, depending on which suburb that is. Obviously you would need to take into account that there would be construction costs that someone does not need to pay, so it would not be a pure $500,000.

But just on the cost issue, the thing that we keep coming across in speaking to the members that are affected by this is that they are not developers in the true sense of the word; they are smaller businesses who may just be a mum and dad who have come across an opportunity and thought, "We could build three townhouses or four townhouses." I keep using that example because in the examples and with the members that we have spoken to, that is what they were intending to do: build three or four townhouses.

MR PARTON: Your major recommendation, based on your submission, would be to provide a transition period to enable those developments to proceed?

Ms Berry: That is correct: not a situation where the government announces that there will be a change to come into effect in six months time and then there is a rush of development applications, with people trying to squeeze in before that deadline. But if a person who wanted to make an application could show that they had been working towards the previous definitions, they ought to be permitted to apply those previous definitions rather than be subject to the new DV 350, provided that they could actually show that they had engaged a designer or engaged a planner and had exerted money to get the process started.

MS ORR: I can certainly see, on one side, the people who are bringing on these developments and who have been affected. The other thing that has come through in the submissions is the community side—that these particular blocks essentially had a loophole attached to them. I wanted to explore it from that perspective, because there needs to be a balance between what is allowable and what is fair. To take a step back, can you outline your understanding of what planning rules would have applied to these blocks previous to DV 350?

Ms Berry: I might refer that one to the planner.

Ms Jackson: Certainly, and I did my homework here. Specifically, the rules that come into play that are affected by this change sit within the multi-unit housing development code under the Territory Plan. The rules that are specifically affected are rules 10, 11, 12, 13 and 14, as well as rules 6, 7 and 8.

MS ORR: For the purposes of clarity, can you give us a brief overview of what those rules are?

Ms Jackson: Sure.

MS ORR: I must admit that I do not have every planning rule committed to memory.

Ms Jackson: I will try. Rules 6, 7 and 8 relate to the plot ratio that is permitted on blocks in RZ1 zones, in RZ2 zones and specifically for surrendered blocks. Rules 10, 11, 12, 13 and 14 relate to the density of dwellings that are permitted on RZ1 and RZ2 blocks, depending on the type of development that is pursued.

MS ORR: Prior to the draft Territory Plan variation, those rules did not apply to these blocks; is that—

Ms Jackson: Prior to the draft variation, those rules did apply, but the wording of the rules was "single dwelling", which has now been replaced by "standard block". Because of the way the definition of "standard block" is now applied, whereas previously we would have said that those rules did not apply because it was not a single dwelling block, they are now standard blocks; therefore, these rules do apply.

MS ORR: Given that we are talking about a small number of blocks, my understanding from reading through the papers is that it comes down to a planning anomaly—for lack of a better word—that happened in, I think, 1963 to 1970, where they could put a granny flat onto these blocks as long as one dwelling was facing the street. There are scattered instances of where people did this at the time; so these blocks now fall into a slightly different category, even though, primarily and initially, they were like the ones next to them.

I will give you a hypothetical. If you have a street where you have four houses that never took up that option to put in a granny flat and you have one house that has, run me through your understanding of the rights to redevelop, say, the block that had the granny flat as opposed to the one that did not. How do they differ and how do they now match?

Ms Jackson: That is an interesting question because under all of those crown leases they have technically always had the right to have two dwellings on those blocks, whether or not they exercised it; but with the definition of the new dwelling, which talks about whether or not it was originally leased for, or originally used for, two dwellings, the advice that we have been given from the planning authority is that it tends to fall more to whether it was used for that original purpose.

MS ORR: So the line they have drawn is whether it was used?

Ms Jackson: Correct.

MS ORR: As opposed to whether it had the right to?

Ms Jackson: Correct; and that is the advice we have had on various developments.

MS ORR: The point I am getting at, though, and what I am trying to get to, is this understanding that the two blocks are not necessarily equal in some respects. From the community's perspective, and from what has been raised in submissions, it means on one block they are getting quite a different outcome from what they would be getting on another block, and this is having an impact in their locality.

I appreciate the side of the developers that you represent, in the sense that they are trying to maximise what they get out of the development. I think sometimes developers get treated as though they are the worst people in the world because of that. I am not making that judgement; they do what they do. They have a right to do it. But within any good planning system, you do balance the community's views on it.

The question I have been going over in my head, and what I would like to seek your view on, is: is there an inherent unfairness to the community, in that one block can do one thing and another block cannot do another thing? Given that this particular circumstance was for a seven-year period quite a little while ago, should there be consistency applied across all of them?

Ms Jackson: I can appreciate the community's concerns about the inherent unfairness. I have also seen crown leases that permitted two dwellings and they had been changed during that period to only permit one dwelling. It does go both ways. Fortunately for some people at the time, they did take up the opportunity to construct two dwellings; therefore those rights are preserved. Others did not, but their leases, from a property sense, permit the same rights.

Ms Berry: From the MBA's perspective, we are not making a comment necessarily on whether what the community groups are saying is true or not, or is accurate. Our concern with the change was that there was no transition period allowed. Perhaps there needed to be a change; perhaps there did not. But, at the end of the day, people were working towards a certain outcome, and before they could lodge their development application there was a change. Whether or not you fell one day either side could inherently change your development outcome.

MS ORR: In other submissions it has been said that these conversations have been going on for a number of years. The point you have just made, Ms Berry, is that it happened overnight, with no warning. I find it hard to reconcile having some people saying years and some people saying no notice at all. Can you please elaborate as to what you knew about the community feedback on this, the directorate's planning and the process that has led up to this, from your understanding?

Ms Berry: From my perspective I did not have any indication that the DV 350 changes were being implemented. I cannot comment on whether there had been community feedback. I am sure that there was prior to that, but the MBA, certainly during my tenure there, was not provided with any industry consultation period.

MS ORR: You have not been aware at any time in the past that there has been contention around these particular blocks and the issues that have been involved with them?

Ms Berry: Not with these particular blocks. I am certainly aware that there is contention generally, and that there is a housing choices review going on. We are certainly aware of that. But in relation to the particular definition change of DV 350, no, I was not aware.

MS ORR: Putting aside the particular DV 350, I am asking more broadly about the issue—some of the concerns that have been raised about these blocks, and this

conversation that has apparently been going on for years. You have had no knowledge that there has ever been any concern around this particular loophole, for lack of a better word?

Ms Berry: No, I have not.

MS ORR: Would it be fair to say that some of your members may have been aware? I find it somewhat unbelievable that this has been going on for a number of years, it has been pushed back on other developments and no-one is aware of anything to do with this topic. I want to check that I am not alone in that regard.

Ms Berry: It is perhaps fair to say that some members would have. They certainly have not communicated that to me, and I certainly would not make the assumption that those members are now the members that are directly affected, either.

MR PARTON: It is feasible, I would have thought. I will ask you the question: do you think it is feasible that if you, operating in this space, were not aware of the potential for change, these members who have been affected were also blissfully unaware?

Ms Berry: That is correct.

MR PARTON: We had an announcement of planning intent from this government today where they spoke of a focus on urban infill. Does it strike you as being a little incongruous with this thing that we are discussing today?

Ms Berry: It does. I admit I have not yet read the planning strategy that was released today. The biggest issue for members of the MBA is to ensure that we have some planning consistency and planning strategy long term and that there are not changes made with immediate effect. Planning does take some time, and purchasing a block and having that forward thinking does take quite a lot of time. If there are changes being made in what may seem to some members to be a haphazard way, it causes them concern and it causes them financial difficulty as well.

MR PARTON: If I were summarising the position from the two of you, if that is possible to do today, it would be that you are not embracing the DV 350 change but you would live with it, with a six-month transition period?

Ms Berry: That is correct.

MS ORR: You said it would be good to have a transition period, and I can appreciate the reasons why you would bring that up. The community have said this is leading to different outcomes for them, given that quite a few of these rules that will now apply did not apply. From the very example you have given, people have been able to put more dwellings on a block than others have been able to do, and that can have very different urban outcomes.

Playing devil's advocate, would a transition period allow people to go forward with properties that are not palatable to the community, simply based on this loophole? I can understand why you are saying they should be able to proceed, because they

have put in the planning, but by the same token I can also see the community's side that it would not be great. Where do we draw the line on fairness?

Ms Berry: Absolutely, and I can appreciate that. That is why we suggested you could only have that transition period if you could show you had been working towards something. I completely accept there is that need for balance.

MS ORR: Do you have an idea of what that number would be? Yes, it sounds great in theory, but are we about to have—

MR PARTON: It needs to be defined.

Ms Berry: There would need to be a definition. It could not just be simply, "I saw that block and I thought I wanted to purchase it and put four townhouses on it." There would need to be a defined criteria that, if you could provide evidence that you had engaged a planner or a designer and there was a development application partly approved or something to that effect, that would be sufficient. It would not be enough that you had simply purchased it and thought about it; there would need to be some evidence.

MS ORR: Of the members coming to you, you said there were four cases each, so we are up to eight. How many of those were at the point of submitting a DA as opposed to just having a block and planning to do—

Ms Berry: From the members that I have spoken with, all of them. And that was the reason for them contacting the MBA to say, "We were about to do this."

MS ORR: Do you know what locations those developments are in?

Ms Jackson: To expand on that point, one of the affected people had a DA submitted but not yet lodged in that they had not paid the fee. So they were quite prejudiced. Three of the cases I am talking about are in Aranda, which gives some credibility to that idea of a certain time period of these leases being affected in the 70s and 80s.

Ms Berry: One of the members I spoke to has a property in Aranda, but I need to check my notes for the other suburbs.

MS ORR: It would be interesting to know, because if you suddenly have three or four on the same street that is going to have a very different approach. I get both sides of it. I am not going to make a judgment as to which way I fall. It definitely it is not an easy one.

THE CHAIR: Thank you very much for attending today. The proof transcript will be sent to you by the committee secretary as soon as it is available. If you have any corrections to that, send them back.

COGHLAN, MRS ROBYN, Secretary, Friends of Hawker Village Inc
GINGELL, MRS CHRISTINE, Treasurer, Friends of Hawker Village Inc

THE CHAIR: We will resume the hearing. I know you were both here earlier. I can see that you both have copies of the pink privilege statement in your hands. Can you please confirm that you agree with it?

Mrs Coghlan: Yes.

Mrs Gingell: Yes.

THE CHAIR: Thank you. Do you have an opening statement before we go to questions?

Mrs Coghlan: I will made a few points, partially in response to what we heard previously. We are representing Friends of Hawker Village. That focuses on the four suburbs around the Hawker centre. They are Page, Scullin, Weetangera and Hawker. Those five suburbs, plus Higgins, which is next to them, were all developed in about 1969, 1970—apart from Hawker, which was the last one. This is where there is a concentration of the sort of dual occupancy that we are concerned about. That is what appears to be a single house with only one front door visible from the road at any one time, with a two-bedroom flat and a one-bedroom flat.

What is happening is that these are randomly scattered throughout the suburbs. They are not in any obviously designated area. They are not uniform; they are just odd houses here and there. Under the single dwelling definition, they were not restricted in terms of the number of dwellings that they could have, as you find in non-unit or multi-unit developments. So there is no maximum number that they could have. They were constrained only by the setback and plot ratio rules.

What perturbed us was a particular one. The original application was for six units with underground parking. That was knocked back. It was approved for five units with underground parking. Then a variation was put in and they were ultimately approved for five units with on-ground parking. That has created a really dense situation with skimpy private outdoor spaces and very tight access to garages and parking spots. It is totally unsatisfactory and totally in contrast to the neighbourhood.

That was in an RZ2 zone. All the houses adjoining it, or the blocks adjoining it, are subject to redevelopment under RZ2 but they will have a lesser number of houses or dwellings. So this is an outlier that upsets the general suburban environment. Presumably, the whole purpose of the Territory Plan in having zoning is to ensure a certain degree of uniformity in particular areas where it is desirable to have a particular form of development.

In listening to previous witnesses, they referred to developments in Aranda. Aranda does not have the type of development that we are talking about. What they are referring to are duplex developments where you have two identically sized dwellings, semi-detached, sharing a wall on a single block of land. They are all clustered together in Bindel Street opposite the school. That is what you expect. You expect to

have this kind of development in a designated area. It shows that there was some planning thought at the time, and densification there is to be expected.

That, unfortunately, is caught within the definition or the change in definition of "standard block", which is more than what our concern was. From our perspective, this definition covers our concerns but I have a concern that this other consequence, this other type of dwelling that is caught up with it, would have detrimental effects for the sort of blocks we are concerned about.

Our point is that because these blocks are random and scattered through just a few suburbs, not all suburbs, they should be subject to the same rules as the adjoining blocks because they were never specifically designated for multi-unit development. I don't know if that registers as something that you are concerned with. But from our perspective, when we are considering the development of these suburbs as a whole, we can see that ultimately it could get very crowded and undesirable from the neighbours' perspectives in particular.

There has been a second one in Scullin that has been approved. It went through a similar sort of situation of applying for more than it expected to get and was knocked back. The next-door neighbour is not at all impressed. It has all sorts of effects. In relation to the point about people who have already bought one of these properties with a view to developing it—and they are concerned that they will have to be restricted to one unit less than they would apply for—we suggest that whenever they lodge their DA, and it is reviewed, they run the risk of having one unit knocked out, depending upon how it all fits on the block.

It has been our observation that the maximum number of dwellings on a block can be a negative in the sense that developers see this as something to be achieved, that it is their right to have the maximum number, despite the fact that the particular features of that block might not support it. Those are basically our concerns, I think.

Mrs Gingell: In respect of the examples that Robyn mentioned, the second one was actually an RZ1. The thing that is particular about these blocks is that the leases do not specify any number of dwellings. All of the people in that area have the same leases along the lines of "for residential purposes". As Robyn said, they were never designated for multi-unit development or more intensive development. It was only that the building regulations at the time permitted these two dwellings. You can understand why neighbours are not happy when they get this kind of development.

These two blocks were of the order of 900 square metres each. Under RZ2 rules, that would have permitted two dwellings and in RZ1 it would have permitted a secondary dwelling up to 90 square metres. Here are developers wanting to put, and being permitted by ACTPLA to put, five or six townhouses on blocks that should only have two residences, two dwellings.

THE CHAIR: Given what you have just said, that blocks should have only two residences, two dwellings, would you, in fact, have a problem if these particular blocks were used for what appears to be the original idea of effectively one building and a secondary dwelling—a granny flat or flat, whatever you call it? I appreciate that is not what people are doing but—

Mrs Gingell: No, I had thought that at the time—

THE CHAIR: I wondered whether people would feel that some people developed early; so they got that right. But other people may have thought that they would wait until whenever.

Mrs Gingell: That still would not be fair in the context of RZ1 because if they had two in RZ1, they would want unit titling on them, which nobody else around can do. Everybody else has to have their secondary dwelling in RZ1 under one ownership, I believe.

THE CHAIR: Yes, I am not suggesting—unit titling is a whole other discussion. That is not what I am suggesting because they were not—

Mrs Gingell: If they had proposed two, our radar would not have gone off like it did when they say they want to put five or six.

MR PARTON: It is a big difference, isn't it?

Mrs Gingell: It is a big difference.

THE CHAIR: Are major issues for you going to be traffic, solar access or just generally how the place looks, which is a bit harder to quantify?

Mrs Coghlan: All those things. The first one was on the corner of Belconnen Way and a major access road into Page. It was right near the Coulter Drive intersection at the bottom of a hollow. ACTPLA said that was totally irrelevant. Now we have cars parked all along the kerb which used to be open because nobody ever parked there. They knew they were in danger of getting sideswiped by someone coming in. I have lost my train of thought; I was going to say something. I will let you go on.

Mrs Gingell: Just the number of dwellings is an impost on neighbours. It is not the same as having one big house on a neighbouring block as it is having a building, possibly the same size because of site constraints and the rules about plot ratios and so on. You have only one household to deal with and most likely they will have two cars and limited visitors. There is a big difference. It is not about the size of the building; it is the activity on the block, the coming and going, the impacts of visitor parking. The visitor parking rules are pathetic. Even though these properties are on Belconnen Way, ACTPLA is still very happy to agree with them and say, "You can park in the backstreets in the suburbs." People do not like that. They consider that unreasonable.

Mrs Coghlan: The other point I was going to make was that this section of Belconnen Way is a narrow road. It is two carriageways with two lanes and a very narrow median strip. It sort of runs across the side of a slope. People do not park at the kerb on that street; they park on the nature strip. I consider nature strips to be very important. In this day and age, with climate change, we need to be cultivating our nature strips and preserving the grass. But they are all becoming barren because there are cars parked all over them. Not only that; there is the extra access in and out of them, particularly in peak hours, which is getting increasingly heavy.

But that is just one of the side effects of greater densification. It means you have more ingress and egress from blocks all the time, and parking is always a problem because there are never sufficient parking spaces provided. The parking code is totally inadequate, which is not something under consideration today.

MS ORR: Sorry, the parking code just got me. I lost my train of thought. With these changes that are coming, what we have heard consistently is that the number of dwellings on the blocks will come back. Whether it is by one or whether it is by two, it will be scaled back. You would assume it still allows for development of more than one dwelling to go on these blocks. You might have two or three as opposed to four.

I think I have read in here or more broadly that there has been a criticism that it is just anti-development; they do not like infill; all these sorts of things. Would you like to put on the record what your view is? If two or three townhouses go ahead as opposed to four, what is the difference to you? Do you oppose it or do you see a difference in that?

Mrs Coghlan: In relation to this—

MS ORR: Sorry, it was not the clearest question.

Mrs Gingell: I know what you mean. We accept that there are within the multi-unit housing code maximums for the number of townhouses and we accept that if one of these types of buildings and leases is in an RZ2 area the redevelopment should comply with the number of dwellings permitted in RZ2, just like it would for every other neighbour there.

RZ1 is a bit trickier, but my view would be that when a person buys a property in RZ1 and you have got the same lease as everybody around you, and there is a single house on it, you would have the same redevelopment opportunities—all of you—and therefore, it is these anomalous ones that need to be dealt with.

MS ORR: The issue, then, is not infill; it is not densification; the issue is wanting to see consistency apply across the area?

Mrs Gingell: Exactly.

MS ORR: The other part I wanted to pick up on was: you have spoken about how these blocks are quite scattered, which does provide an inconsistency. Can you further elaborate on why it is so unpalatable to you to have these different bits and pieces? Mr Parton has noted that the government has put out something today that said more infill within suburbs. Would it not be great, then, if we just let everyone infill, if that is the way someone wanted to go?

Mrs Gingell: No, it would not be great.

MS ORR: I am interested to hear the other side of the story.

Mrs Gingell: It would not be great at all. It would destroy the character of established

suburbs. We have got enough people living cheek-by-jowl in pocket handkerchiefs in the newer developments, and people currently have the choice. They can go for a whiz-bang house that has got everything that opens and shuts and is brand new and forgo having more land or they can choose to have a garden. I readily concede that the days of the 2,000-square metre block are gone but I think there should be zones where you can be confident that you can have a family sized house and a back and front garden.

MS ORR: I guess the point raised by the MBA in the previous session that if the agenda is for infill—and acknowledging that it seems quite weird that we are bringing this change—

Mrs Gingell: Infill that is consistent with the RZ2 rules if it is in RZ2.

MS ORR: Just to be clear and for the purpose of Hansard, it is not saying no to infill; it is not saying no to densification; it is just saying make it consistent?

Mrs Coghlan: Yes, so that this block here is subject to the same rules as the blocks around it.

Mrs Gingell: If they have got the same lease.

Mrs Coghlan: In the same zone.

Mrs Gingell: If they have got the same lease condition—in other words, there is no number in there—because with lots of the older suburbs, after all this shemozzle, they changed it and in newer leases like in Hawker they say "a single dwelling". It was clarified in the new leases. This is a period when they just wrote leases as "for residential purposes".

Mrs Coghlan: And to elaborate on that, my research has shown that the lease wording had not changed between about 1924 and 1970. It just said "for residential purposes" and you had to start construction of one building within six months. That is all it said. The city leases act has also provided today that anyone can sublet; they can rent out a portion of their dwelling, even a portion of their land if they want to. It is private outdoor space. That was always the provision. But the Australian mentality was for a single house on the block.

It was not until—I was told this by a former NCDC planner and so it is just hearsay—about the late 60s, when there were a lot of German builders in Canberra, and it was some of those who came up with this idea of, within that one building envelope, creating two separate dwellings. As far as we can see, the earliest that that happened was maybe about 1968. By 1971 the whole lease wording had been changed to include a single dwelling building.

In this instance we have been raising this particular issue for over four years, and we have finally got to that point where, thankfully, something has been done about it. It seems to me—it suggests—that it was never intended for these particular blocks in any way to be treated differently from the blocks on either side of them.

MS ORR: And just playing devil's advocate again, a point that has been put to us by the MBA is that their members have been—I am paraphrasing—penalised by this. They are my words, paraphrasing what they have said. You have heard what they have said; so I do not need to go over it in detail. People who had progressed developments and proposals have now, according to them, overnight been stopped from doing this. Do you have anything to say to that statement?

Mrs Gingell: It is only the number of dwellings. They can still build a four-bedroom one where they were going to build a three-bedroom one, and they will be able to charge more for it. We are talking about reduced profit, that is all. The fact is that they have sought out these blocks where they know this lease provision has this hole in the multi-unit housing development code which does not constrain the number of dwellings. They seek these blocks out with the intent of wanting to put more than they could on under RZ2. The ones in Aranda there, they would be RZ2 blocks, all of them, and they could be developed under the RZ2 rules and dwellings. These are people who have sought out an opportunity, because they have discovered it is there, to put more dwellings on than would normally be allowed for the size of the block under RZ1 and RZ2.

Mrs Coghlan: And presumably they thought: "Whoopee-doo!" not "Why is this so?" but they were not thinking this was inconsistent with the general planning context.

MR PARTON: Our previous guests spoke of a number of instances where individuals had advanced the potential to develop one of these blocks to a point where something had been done. It was more than just conversation; things had been progressed. We know a number of those blocks are in Aranda. Are you aware if any of them fall within your umbrella of concern in terms of those four suburbs you look after?

Mrs Gingell: We think there are about 50-plus.

MR PARTON: No, I am talking about the instances, which we think number potentially eight, maybe less, where people have made specific plans to build specific developments that will no longer be able to be done to the same extent.

Mrs Coghlan: We have not heard anything like that, and we pay attention to the development applications now.

Mrs Gingell: That is the only way we can possibly know.

MR PARTON: Yes, I am sure you do. I can see. You must be chuffed that you have done what community organisations should do, in that you have spoken up on behalf of your community and done so in a considered way through the correct channels. You would have to suggest that this change is partly due to the activism of the Friends of Hawker Village. You must be pleased.

Mrs Coghlan: We are pleased. We had been quite discouraged for some time.

MR PARTON: In your opening statement you spoke of potential unintended consequences of the change, not specifically around the blocks you are talking about

in Hawker and surrounds but in Aranda and other places. Can you clarify that?

Mrs Coghlan: It seems to me that the current proposed changes capture not only the sorts of blocks we are talking about—they appear to have a single-dwelling house but in reality have a granny flat as well—but also places such as in Aranda and opposite the Cook shops that have single blocks with two-storey duplexes on them. Those blocks are individually owned. I have checked it on Allhomes and they are not divided into separate blocks. Each townhouse does not have its own yard; it is all common space. To me, that is not what we intend.

MR PARTON: No. I really appreciate your honesty on that because—

Mrs Gingell: Quite frankly I disagree with that. The two instances that have been raised would be in RZ2. They could quite happily redevelop under the RZ2 maximum number of dwellings. There are duplexes that look exactly the same as the ones the MBA and Robyn have alluded to, opposite the Brindabella Christian College in Lyneham, but they are not numbered A and B. They look the same—semi-detached houses—but they are obviously different.

We do not know how many of these duplexes, like in Aranda and Cook, there are across town, but I suspect they would pretty consistently be in RZ2. There are some in Curtin, I think, not near the main shopping centre, but there is a place that used to be a shop but is now a restaurant further down. There are a few there that look like that and that could well have been because they were close to what were shops. They have the same sorts of characteristics. But, quite frankly, I would be very happy to see all of those duplexes embraced—if they are in RZ2, they have the RZ2 rules.

MR PARTON: And for those that miss out, it is just bad luck?

Mrs Gingell: If it has already two semi-detached houses, the blocks are likely to be of the order of 900 square metres and they will be able to put two on under RZ2 rules.

MR PARTON: But in terms of those who had progressed plans to a certain point and may be, according to the MBA, out of pocket half a million dollars, that is just the way the cookie crumbles?

Mrs Coghlan: I felt that was an exaggeration to say they would be out of pocket half a million dollars. They will make a lower profit from having fewer developed dwellings but they would have the capacity to make them larger—put an extra bedroom into them or something—which would bring a higher price.

THE CHAIR: Ms Berry also said that that if there was one less unit you would not have to pay building costs for that. She was not suggesting someone would be out of pocket the whole half a million.

MS ORR: It was put forward by the MBA that a transition period should be allowed so that the people they represent who have a proposal ready to go can still get that in. What do you think of that suggestion?

Mrs Coghlan: I can see her logic, but when developers lodge their development

application they have to be aware that there is a chance they will be knocked back and they will have to fix something or other. All that costs money. They might have to go back and redo plans. The example we quoted in Page, in RZ2, had one knocked off in the first instance and they went off and redesigned the whole thing and re-lodged the application. The example in Scullin in RZ1 did much the same sort of thing in the process of the development application—they continually revised it to try and get it approved. It all costs money, and that is without this change in the legislation. It is a fact of life.

THE CHAIR: Thank you very much for coming this afternoon.

Mrs Gingell: There are about 50 of these in Page and Scullin, the type of building we are primarily concerned with.

THE CHAIR: Thank you; I should have asked you. I asked the MBA and I definitely will ask the government.

Mrs Gingell: I do not think the government knows.

THE CHAIR: I know they do not know, but they should be in a position to at least estimate it better than anyone else.

The proof transcript will be sent to you as soon as possible. If there are any corrections, please send them to the committee secretary within five days.

YOUNG, MR PETER JAMES HENRY

THE CHAIR: Good afternoon, Mr Young. Welcome to this public hearing of the Standing Committee on Planning and Urban Renewal inquiry into draft variation 350—changes to the definition of "single dwelling block". I need to draw your attention to the pink privilege statement. Can you please confirm for the record that you have read it and are happy to agree to it?

Mr Young: I can confirm that I have read it and agree to it.

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

Mr Young: Yes, I do.

THE CHAIR: We are in your hands.

Mr Young: I am a lot less concerned than the other witnesses you have heard from today. I am a pure mathematician by trade. I read legislation for fun. Usually, when I point out pedantic errors, I am told that nobody cares, so thank you very much for the opportunity to appear here today.

I did once try to have my house deemed to be not a single dwelling block because I wanted to have a second house, and I was told, "No, it's a single dwelling block; you can't do that." Fair enough. Maybe there is an element of, "If I'm not allowed to do it, no-one else should be allowed to do it," but really I am just here trying to point out a subtle drafting error in the legislation.

I am certainly not a developer. I have never submitted a development application, and I do not live in an area where this loophole is being exploited. I am just a nerd interested in legislation, really.

I had no problems with the definition originally in DV 350 until it was revised as a consequence of the public consultation period; then I believe a subtle error was introduced. It is in my submission but I will run through it. The revised definition in DV 350 is that a standard block is a block with one of the following characteristics. We have characteristics A, B and C, and I have two concerns with this definition. Firstly, there are blocks in Canberra whose lease commenced prior to 18 October 1993 that were used for one dwelling. I have an example of such a crown lease here. I have a couple of examples here, if anyone wants to have a look, but I can read from it for you.

THE CHAIR: Clearly, we all know there were a lot of single dwellings before 1993, so—

Mr Young: Yes. I will run through the technicality. This lease, commencing on 16 December 1987, "herein referred to as the date of commencement of the lease", also contains the clause, "A second single unit private dwelling may be permitted." This block was originally used for one house but leased for two.

If we look at this proposed definition, characteristic A is satisfied—originally used for the purpose of one dwelling. Characteristic B is also satisfied, in that it was originally leased for the purpose of two dwellings before 18 October 1993. So we now have two of these conditions satisfied. I have a few examples, and there are probably hundreds. This definition says that "a standard block is a block with one of the following characteristics". Maybe you would think it is meant to mean at least one of these characteristics, but if you look at point C, they actually use the terminology "at least one". In these four lines of this definition, there is an inconsistency.

If it was meant to be at least one, it should say "at least one". You could argue that the Legislation Act allows a word used in the singular to mean the plural, so that if I said "a house", that could be interpreted as one house, two houses, and "houses". But "one house" means one house. It is not a term in the singular; it is a numeric word.

I know that is being very pedantic, but the whole point of DV 350 is because developers found an error and were able to exploit that loophole. I think this new definition creates a new loophole and it might not take developers too long to exploit it. It would be pretty easy to change that to "a standard block is a block with at least one of the following characteristics".

The submission that caused this change in definition was, in fact, for a couple of blocks in Holt—block 18, section 127, and block 21, section 128. These blocks were very carefully selected to allow for extra development—intentionally not single dwelling blocks or non-standard blocks. With these blocks, or other ones similar to them, if you build one house first and then you are going to build a second house in a year or two, as soon as you have built that one house, characteristic A is satisfied. It is being used for the purpose of one dwelling. So that block that was specifically earmarked to be different, and to be a non-standard block, all of a sudden, forever, is deemed a standard block. So if someone lived in it for a day, does that constitute "use"? If someone went to the toilet in it, does that constitute "use"?

In my submission I have proposed an alternative definition whereby characteristics A and B are different, and a block potentially earmarked to be a non-standard block would forever mean a non-standard block.

THE CHAIR: I must say I do not actually have any questions, Mr Young, because I read your submission and it made total sense to me; the idea of one or more seemed totally logical. My colleagues may have questions.

MS ORR: No, I think you have elaborated on that very well.

MR PARTON: We do not get many submissions like this. I wish we had more. Are you looking for some work, Peter?

Mr Young: Not at the—

MR PARTON: How long did it take you to seek out and find those examples of the blocks at—

Mr Young: Not particularly long. I could not find my own lease before making my

submission, but a work colleague had an electronic copy of his. This is his lease. I did find another one online, just by searching. I think I had a sleeping baby in my arms and I was trying to search on my phone. Yes, it took a little while.

MR PARTON: I think you have explained yourself perfectly. I certainly do not have any further questions.

THE CHAIR: In that case, thank you very much, Mr Young, for your attendance. A copy of the transcript will be sent to you, and if you have any changes, please get back to the secretary within five days. Today's hearing is adjourned. Thank you, one and all.

The committee adjourned at 3.08 pm.