LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, PLANNING, TRANSPORT AND CITY SERVICES

(Reference: Inquiry into the Planning (Territory Priority Project) Amendment Bill 2025)

Members:

MS J CLAY (Chair)
MS F CARRICK (Deputy Chair)
MR P CAIN
MS C TOUGH

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 14 APRIL 2025

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Secretary to the committee:
Mr J Bunce (Ph: 620 50199)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 12.00 pm

EDQUIST, MR JOHN, President, Griffith Narrabundah Community Association
HUNTER, MS SIMONE, Chair, Weston Creek Community Council
JOHNSTON, MR RICHARD, Inner South Canberra Community Council
FROUD, MR ALAN, Vice President, Yarralumla Residents Association
LE COUTEUR, MS CAROLINE, Chair, Woden Valley Community Council
THOMPSON, MS RACHEL, Treasurer, Woden Valley Community Council

THE CHAIR: Good morning, and welcome to the public hearings of the Standing Committee on Environment, Planning and Transport and City Services for our inquiry into the Planning (Territory Priority Project) Amendment Bill 2025. The committee has received 37 responses to the call for submissions to this inquiry, and these submissions have been immensely helpful. Thank you very much; they were very considered.

Over the next day and a half, our committee will hear from community and residents groups, community housing providers, environmental and heritage groups, and advocates for the property and housing industries in the ACT.

This morning, we will hear from the Griffith Narrabundah Community Association, the Weston Creek Community Council, the Inner South Canberra Community Council, the Yarralumla Residents Association, and the Woden Valley Community Council. This is our first hearing for this inquiry.

The committee wishes to acknowledge the traditional custodians of the lands we are meeting on, the Ngunnawal people. We would like to acknowledge and respect their continuing culture and the contribution they make to the life of this city and our region. We would like to acknowledge and welcome any other Aboriginal and Torres Strait Islander people who may be attending today's event or who may be watching from somewhere else.

The proceedings are being recorded and transcribed by Hansard, and they will be published. We are also live webstreaming our hearing today. If you take a question on notice, it would be great if you could say, "I will take that question on notice." We do not often have questions taken on notice by our community witnesses; but, if that comes up, that is what we would like you to do.

Welcome to the proceedings. Does anyone have any comment to make on the capacity in which you are appearing? Also, could you confirm that you have read, received and agree with the privilege statement?

Ms Thompson: Yes, I have read the instructions for today.

Ms Le Couteur: Yes, I have read the privilege statement.

Mr Froud: I am the vice president of the Yarralumla Residents Association. Peter Pharaoh, the president, provided the submission, but he is unwell and not able to attend. That is why I am here.

THE CHAIR: Thank you for coming in.

Mr Johnston: Yes, I have read the requirements.

Mr Edquist: I have read the privilege statement.

Ms Hunter: I have read the privilege statement.

THE CHAIR: Thank you. I remind everyone of the protections and responsibilities afforded by that privilege statement. Witnesses must tell the truth. Giving false or misleading evidence is a serious matter and might be considered contempt of the Assembly.

We will take a couple of very brief opening statements. Richard, we might start with you.

Mr Johnston: I thank the committee for the opportunity. Before I go to a few points that I want to make about our submission, we appreciate the open, consultative approach that the committee is taking, in contrast to the way that the government seems to want to play community consultation these days. We will talk a little bit more about that.

From the ISCCC point of view, our fundamental concern is that residents affected by a development proposal on adjacent land to them should continue to have the right to at least some form of independent review of any approvals of the Planning Authority. The removal of the right to review grants dictatorial powers to the Planning Authority.

The only class of territory priority projects currently exempt is light rail, which is a very large infrastructure project that is already subject to additional approval requirements, such as environmental impact assessment. Public housing and public health facilities are not subject to those sorts of requirements, particularly the smaller scale developments, which are the ones that are the redevelopments of single house blocks, which do create lots of problems. In that sense, public housing and public health facilities are no different to private development projects.

The ACT government has already removed the requirement for pre-DA community consultation in its Planning Act. The Chief Planner said this was because developers did not like it. It is generally accepted, at least by better developers, and even by at least one senior officer of the Planning Authority that I have talked to, that the pre-DA design phase is the best time to resolve issues. Indeed, the principles of good public consultation in the Planning Act say the same thing, yet the government ignores that.

Developers do not like third-party appeals, either, as we know. We ask: is this proposal the precursor to removing third-party appeals generally? That is a real worry that we have. This is a precedent that is being set here.

The commissioner for housing do not do pre-DA community consultation—do not like community consultation, and do not do it if they do not have to. My colleagues on either side can certainly give examples of that. They do not respond to community representations, even at the DA stage, and the Planning Authority lets them get away

with it. In my experience, the Planning Authority do a good job in identifying what the community concerns are and then fail to respond to them. They even resist mediation—this is the housing people—at ACAT. Again, we have examples of that. They have to be forced by ACAT to make design changes. That is really the only mechanism available to push, particularly the commissioner for housing people, into changing proposals. Do you want me to wind up?

THE CHAIR: I do. You are welcome to table it. It is just that we have such a short timeframe.

Mr Johnston: Okay. In closing, nobody likes going to ACAT. Nobody wins there, except the lawyers. There are better ways to provide independent review and better decision-making. We have, as we have in the past, suggested the model of local planning panels, which is in use in various, more significant parts of New South Wales.

THE CHAIR: Simone, do you have an opening statement to make?

Ms Hunter: I do.

THE CHAIR: It is okay if you would like to table it, but you are welcome to go ahead.

Ms Hunter: Okay. I will give a short version. Thank you, Chair, and members of the committee, for the opportunity to speak here today. I am here on behalf of the Weston Creek Community Council and the Weston Creek community to express our strong opposition to the planning amendment bill.

I have been part of the Weston Creek Community Council since 2017, and a resident of Weston Creek for over 45 years. Weston Creek knows firsthand what poor planning looks like. The Molonglo Valley is a case study for what happens when growth outpaces infrastructure. Schools, roads, health care and transport are still struggling to keep up. The result is community frustration, distrust in government and daily impacts on life.

Our community council has spent most of its time since the bushfires consulting on planning issues in Molonglo that have, in turn, impacted our community. We have had no meaningful input into how to shape planning for renewal in our own district, and no opportunity to engage positively at the beginning of a process to identify where we might be able to contribute to social housing by identifying disused sites and contributing to broader, district-wide priorities.

Despite being directly impacted by fire, Weston Creek has received next to nothing in bushfire-related renewal. There has been no forward planning, no engagement and no developed vision. We need to shift from reactive planning to proactive people-designed planning. Critical infrastructure and entities like the RSPCA, Burrangiri and Phillip pool and ice rink are being relocated and shut down without warning and without consultation. Our communities are not just excluded from consultation; we are being blindsided.

While the ACT government has had every opportunity to consult, it is actively removing employment, aged care and health facilities, and community assets from our

local and neighbouring districts without any plan to replace them. When you bring in and we start to talk about having a new system, such as this bill, where you can declare a priority project, we are not in a space to be able to assist with these, because we do not currently have any framework for planning to support that housing.

Weston Creek deserves to be prioritised, not because we demand special treatment, but because we have been consistently overlooked, despite our clear and pressing needs. Our district has experienced rapid adjacent population growth, significant infrastructure strain, and direct impacts from natural disasters, like the 2003 bushfires, yet we receive little to no investment in renewal, community facilities or any targeted planning responses.

We are a community with an ageing population, families who want to remain in the area and residents eager to contribute ideas on how well we can grow. What is missing from this is an invitation to be part of that conversation, and this bill furthers that missing invite.

THE CHAIR: Simone, we are 10 minutes into the hearing; is it possible for you to table the rest of your opening statement?

Ms Hunter: I can table that.

THE CHAIR: Thank you so much. I am really sorry to cut you off; we have so many people to talk to.

Ms Hunter: That is all right.

THE CHAIR: We will run down the panel. I am hoping we get at least one question each, but I will interrupt and drive us on when we do not. I will ask the first question. The first question I want to ask—this has come up in quite a few submissions—is about two matters that came up in the former term, with the former planning committee. The former planning committee recommended that government keep pre-DA consultation, and government has not done that; and the former committee gave some evidence about expert planning panels.

Would anyone like to make a comment about those two matters—pre-DA consultation, early consultation, and planning panels?

Mr Johnston: I have been thinking quite a lot about this. It has been put to us by certain developers that the problem with the community consultation, pre-DA consultation, was that it came at the end of the design phase. The government instrumentalities and the design review panel, if they are involved, have all had their bit and, by the time the developers go through all of that, and are then told, "By the way, you've got to talk to the community," they have finalised their design as best they can, with all of the government input. I think the solution—

Mr Edquist: It is pretty much, "What colour do you want the door?"

Mr Johnston: Yes. The solution, to me, is that community consultation has to be folded

into all of that initial discussion that goes on within the government and the design review panel. It cannot be bolted on to the end of it. It has to be an important part in the middle of all of that, if not the first thing to do.

Ms Le Couteur: Chair, my question regarding your question is: are you seeing these as just something for these proposed territory priority projects, or are you seeing it in general? The main point that I would make about this bill is: why are we treating public housing and public health as different things, from a planning point of view?

I will not bother repeating all of the things in the written submissions you have received about problems—technical problems, lack of proof problems with various public housing. There is no reason to think that public housing is designed better than private housing, so from that point of view the whole thing makes no sense.

I assume that the reason the government is going down this route is that it believes people will be objecting to public housing because of the tenants, given it does not make sense the other way. From my experience in this place before, as an MLA, I have been involved in a number of cases, particularly in Weston. Simone will probably remember when Holder and Chapman both had public housing developments proposed, and people from Chapman were particularly upset because the land for the development had been their escape route in the bushfires. For the people in Holder, it was a high-up site and it overlooked a hell of a lot of people. And all of these had previously been public open space. The one in Mawson worked out quite well. There was a little bit of to-ing and fro-ing, and a happy solution was achieved for all.

Of course, with Molonglo, a bunch of people came along and showed me the paperwork they received from the Suburban Land Authority, which said there would not be public housing nearby, and they were objecting to the fact that, because the block had not been sold, it became public housing.

We need to stop thinking that it is public housing tenants who are the problem; the issue is with the planning for the buildings, whoever the human beings are who will live in them. In terms of objections to public health facilities, I am not aware that we have had any. What is the problem that we are trying to solve?

THE CHAIR: I imagine we will be asking the health minister that later today. You have seen the media commentary on this bill that we have seen, so you have as good an idea as this panel has as to why government has put this bill up. It has certainly been an argument focused on public housing.

Ms Hunter: We were chatting outside beforehand, and it was noted that, with this hearing, if all of the groups that are talking to you separately had got together and spent two days doing a workshop to sort this out, that would be a better form of consultation, rather than looking at introducing this bill. We would definitely be open to early engagement. In fact, it is essential, in territory planning, for any consideration of the territory project plan, that community groups, all groups, get together and have a discussion prior to even considering what that looks like, so that we do not waste time at the other end, and put the ideas on the table.

THE CHAIR: I am not sure whether you noticed that, with the consultation on this bill, from my reading, the answer was just with government, I think. This is probably the first—

Mr Edquist: Yes, it just suddenly appeared.

THE CHAIR: Yes. This is probably the first public consultation on this topic.

Mr Edquist: I think that the bill, although it is misdirected, does point out a problem, which is that ACAT is very cumbersome, very legalistic and far too slow. It does raise the question: is this heavily legalistic, quasi-court-type procedure the right way to consider planning issues? Most of our disputes have been matters of fact: what does the plan say? What do the rules say? Either this plan complies with the rules or it does not. With all of these hours that you spend in ACAT while the lawyers argue about the meaning of section 120D of the planning and development act, that is just time out of our lives that is wasted. They are all having fun and loving being lawyers; that is their job. There are technical experts in planning that are put in to assist these legalistic people, but it is a wrongful manner, and it just takes so long. And for what?

THE CHAIR: John, that brings us back to where we started, on this question of maybe having planning panels or some other organisation—

Mr Edquist: Yes, planning experts who can look at it.

THE CHAIR: that is not the Planning Authority. Is that where that comment comes from?

Mr Edquist: I will not dictate a solution, but there are questions to be asked. Is the ACAT, in its current format, the right way to deal with planning? If not, what do we replace it with? Yes, we can look at what happened in the past, and at what other jurisdictions do.

Ms Hunter: If you had the planning panel initially out at the front, less activity would happen in this sector at ACAT. But there is no need to remove that check and balance from this process. We just need to go back and add the panel at the beginning.

Mr Johnston: One of the benefits of the planning panels, as they operate in New South Wales, is that they are quite open. They are like this format. You have a group of experts. They hear from the proponent, and they hear from anybody who has concerns, and they make a very quick decision, either on the spot or within a couple of days. It is an excellent model.

Ms Thompson: What I am hearing here, and from my experience as well, is that, more broadly—not necessarily just for health and public housing—the process seems to be in the wrong order. The process itself needs to be looked into and, at the front, there should be that community engagement.

Mr Froud: The Yarralumla Residents Association, YRA, indicated that it could provide evidence on a particular case. Generally, we are supportive, as members of and

contributors to the ISCCC, and we are here supporting the ISCCC's position and submission.

In the case of Minimbah Court, there are a couple of things that have been a little bit misunderstood. I think that has been, and had a history of being, a very good public housing development. The local community were very supportive of it, and the public housing tenants were very appreciative of the way it was integrated into the community.

In my experience, the YRA, whilst it represents the views of all Yarralumla residents, does not take particular positions on issues, because it represents the collective. I have never heard anybody say anything in opposition to public housing in Yarralumla, and they are very supportive of that.

The local residents around that particular development were very keen that, having regard to whatever happened at Minimbah Court, the public housing would be replaced with better public housing, not with something else. That was their particular concern.

I suppose there has been a level of interest expressed amongst community members over a number of years. Minimbah Court has been vacant for four or five years. I know there was a significant amount of community frustration and upset that, when we have a public housing crisis, in some respects, around the country—and we all buy into that—it is inappropriate that a public housing asset like that would be allowed to remain vacant for so long.

That is by way of background. You went to the point about pre-DA consultation. I know that, starting in June 2021, the YRA approached the minister initially, then officials. On six separate occasions, YRA offered, because of the level of interest, to try and engage, and have some idea in the broad about what might be considered or proposed, so that some of that anxiety could be relieved. On every single one of those six occasions, reference was made to triggering a pre-DA consultation process "when we are at that point, and we're not at that point, so we will be in touch with you, and you will be consulted, as will the local residents".

When that DA was finally released, admittedly, that was in 2021, 2022 and into 2023, and, of course, a new planning regime has been introduced. There is no pre-DA consultation obligation in the new regime, so there was no consultation at all about what this development might be. The first that the local residents learned of this particular development was when the notification of the DA was put on the property in September 2024.

Things then moved very quickly. Sixteen local residents objected; they wrote and expressed what I thought—of course, I am biased, perhaps—was a somewhat reasonable take on some of the issues. None of the issues were major. They were just trying to elicit a better solution, while raising some concerns, and they were stonewalled. They were told, "No changes will be made and, if you want to pursue anything, go to ACAT." They went to ACAT. They were unsuccessful, but I think the folk did not understand the ACAT process, in that they were taking it to ACAT for the wrong reasons. They were assuming that they would be able to negotiate some minor design elements and changes.

I support everyone that has made the comment that community engagement and consultation are important and should be factored in. To deny that opportunity in the new arrangement, in the new bill, is not the right way to go.

THE CHAIR: I might summarise what you have said, and you can tell me if I have it correctly, for the record. YRA, on the Minimbah Court development, tried to contact government six times to—

Mr Froud: They did, and received comments every time.

THE CHAIR: And the comments came back that there would be pre-DA consultation?

Mr Froud: Correct.

THE CHAIR: Of course, the legal system changed, so there was no ability for the community to have input; then there was no ability to input into design changes other than through an ACAT appeal.

Mr Froud: Correct.

MR CAIN: You may all be on the same page here: I have heard, in my shadow planning role in particular, as well as in this committee role, about the lack of genuine consultation that the government undertakes. There was an opening comment made in that light. I note that the Weston Creek Community Council submission contains some suggestions. How would you go about codifying consultation so that it is both genuine and comprehensive, let alone when would be the best time to have it?

Mr Johnston: There was a quite comprehensive policy paper—a guideline—produced by the Planning Authority about pre-DA community consultation when it operated, when it was first brought in.

MR CAIN: Richard, in particular, how do you legislate for that? It is easy to say, "Here are the consultation conditions, and we've done all of them."

Mr Johnston: It was probably put in place through a regulation, in fact. It was binding.

MR CAIN: Yes, but this is the big challenge, and I have pondered this myself, as a lawyer and a person who formerly has sent drafting instructions and helped to model laws in certain areas. How do you codify comprehensive and genuine consultation? If you have some ideas on that, please let the committee know, or just let me know.

Mr Edquist: How do you avoid sham consultations?

MR CAIN: Yes.

Mr Edquist: A developer can just tick all the boxes.

MR CAIN: Correct.

Mr Edquist: The word "genuine" is the critical word there.

MR CAIN: How do you make it something that binds the executive and say, "We just can't say that we asked for submissions, and we told them what we thought"? It is a big challenge; I am exploring it, and I would invite your contribution.

Mr Johnston: One way we used to do it, when I was in the Planning Authority years ago, was that we had a requirement that developers put in a report. It was under the general heading of "high quality sustainable design process".

MR CAIN: Like a listening report.

Mr Johnston: It started under the previous Liberal government. The developer had to respond to comments; then the Planning Authority had that document. "These are the issues raised, these are the developer's response." The Planning Authority was then supposed to say, "Okay; we think you've done your consultation adequately." That is the kind of model that I think you are talking about.

MR CAIN: Yes.

Ms Thompson: I would add to that: in a legal sense, you have the right of reply on that as well. It should be the people who are asking for it to be considered, the developer's response and then a right of reply to that developer's response. Unfortunately, with the ACT government and the way it operates at the moment, you do not necessarily have that right of reply.

MS CARRICK: I have a question on consultation; I will then move on to timeframes. The definition of "consultation" in the *Macquarie Dictionary*, the *Cambridge Dictionary* and the *Britannica Dictionary* is that it means "meeting for deliberation", "meeting to discuss" or "meeting with somebody". When we come to consultation, the act of actually meeting would be ideal, I think. At the moment, without pre-DA consultation, and if we do not have any appeal rights, we do not get to meet to deliberate or discuss. It is just a matter of putting in a representation, which you may not ever hear back on. The question would be: with "consultation", should it mean "meeting"?

Mr Johnston: I refer the committee to section 11 of the Planning Act 2023, which goes on at great length about principles of good consultation. There are a number of very good statements there. One of those is about timeliness of consultation, and others are about transparency, responses and so on. It is timely if it is undertaken early; and, for a development application, particularly for a significant development, if it is undertaken as early as possible, it says.

MS CARRICK: Nowhere in those principles of good consultation does it say that people should meet and talk?

Mr Johnston: No, it does not. Underpinning those principles, there is a requirement for good consultation guidelines. The minister is supposed to make good consultation guidelines. I am not sure that that has ever happened.

MR CAIN: It is so easy just to say, "Yes, we've done all of that. We've kept all the principles."

Mr Johnston: Yes.

Ms Hunter: Could I throw something in here about best practice change management? When I look through all of the district plans, the strategies and so on, there is often a reference to change—identified change sites, identified opportunities for change, exploring and investigating this stuff. That language lends itself to best management change practice, which, in our space, means engaging, meeting early with key stakeholders et cetera, and opening up those dialogues and having conversation, and explaining and talking to each other about why there needs to be a change.

Best management change practice involves starting to liaise with the people affected directly by change early and often. I do not see any change management practice being put in place. Consultation is one element of that; transparency is another. It is about meeting people where they are, on equal terms. Making decisions from afar, then dropping in and just telling people what is happening is not consultation.

I think that we can do better. It is 2025. Particularly in our space, down in Weston Creek, we need some trauma-informed practice. We have people who need agency and a little buy-in to their space. It is a consideration, when you are coming into communities that have had significant events and so on, to come in a little softer than, perhaps, you would in other spaces. I am happy to chat further about that another time. I think we need to look through the prism of change and affect more change in our consultation space and less change with this bill.

Before you go and open a can of worms by removing the article at the end of it, the risk that you have with this bill is that the change it will effect is, "We don't consult at all." You are locking the public out of consultation completely. With the bill, by removing that final process at ACAT, it means no-one will bother.

Mr Johnston: Having already removed the requirement for pre-DA consultation.

Ms Hunter: So you are not consulting at all.

MS CARRICK: My question is about timeframes. A lot of this is driven by the length of time in ACAT, but public housing just does not start when we get to ACAT; there is a period beforehand. In your experience, for example, in Yarralumla, those properties sat there for four or five years. My question is about the timeframes from when tenants vacate a property to when construction might start. There are years in that process, and it is not all because of ACAT.

Mr Edquist: If we are talking about public housing, that goes to HACT and HACT's internal management procedures. I do not think I would be alone in saying that they do not seem to be the best-managed directorate in the ACT, let alone in other places in Australia.

Mr Johnston: Yes, that would be my experience.

Mr Edquist: But if there is a problem, Andrew Barr is the Chief Minister, and Yvette Berry is the minister. If they do not like it, go and ream out their departments. Tell them that it is just not good enough.

MS CARRICK: There are opportunities between vacating a property and before we get to ACAT to improve timeframes?

Mr Johnston: Definitely.

Mr Edquist: I would think so, yes.

Ms Thompson: Keep the people in there until such time as you are about to break ground, because the perception in the community is, "We're desperate for public housing. There is all this vacant public housing around. Why is it not being used while the planning process is in train?"

Ms Le Couteur: One of the reasons for the delay is that, to save money, the ACT government uses its own land to develop on, but if it has not already been developed, the public will think it is open space. This is the cause of an awful lot of the problems with new developments.

Of course, there was the debacle a couple of years ago, with Housing ACT trying to evict tenants who had been in blocks for a longer period, so that they could redevelop them. These are not problems with ACAT; they are problems regarding the amount of resources we put into public housing and where we put it in our priorities, and we are putting it pretty low.

There is a place opposite my place that has been vacant for a year and a half—public housing. They have done a refurb, but they still have not got anyone in it. It is dreadful.

MS CARRICK: With their whole planning, where it is greenfield sites, and under the land release program, potentially there could be some work done around that, in consultation. I am not talking about out on the fringes, but within the urban boundary. There could be consultation; they could then be put into the land release program, so that we know where they all are. Do you think it is possible that they could do work up-front on consulting about what spaces could be used to put in the land release—

Mr Johnston: Of course.

Ms Hunter: Absolutely. We have been waiting for it. I do not feel that the government is using the community councils to the best of our capacity.

MR CAIN: Where have I heard that before?

Ms Hunter: We do not want to be in ACAT; we want to be in this positive space. Instead, we are down here in this negative space, and it is not because we have been taken there; it is because the planning authorities are not doing their jobs, essentially,

and we have to show up and do it for them. That is not fair, and we are only armed with common sense, most of the time, and we still beat the lawyers.

I think that there has been a gross misrepresentation of the goodwill of community councils across Canberra. We would much prefer to work in a positive space, to work on solutions with proponents, with Housing ACT, with agencies and with our elected leaders to solve this, in order to move forward and elevate the discussion to the level that it deserves. The people who need the housing should be given the dignity and the opportunity to be included within a community, rather than having this disconnect that is currently happening.

MS CARRICK: Sometimes, with all goodwill, things do slip through the cracks and we will end up in ACAT. Do you think there are possibilities for a triage process there whereby, after mediation, there is some sort of prima facie case? There may be an issue that needs to go through the process, and there may be other ones where perhaps the community does not understand the planning rules so well and it could be fast-tracked? Public housing is a big issue and a priority for the government and for all of us. With those where there is not really a prima facie case under the Territory Plan, they could get moved through more quickly.

Mr Edquist: There is a place for that in the ACAT process. There is something called the directions hearing, which is supposed to take place within 28 days of lodging an appeal. That is usually when they work out when the lawyers and the members of the tribunal are available. Also, if you are an applicant, they ask you, "What is the basis of your case?"

It may be something that the ACAT cannot rule on because it is outside their jurisdiction. For instance, in one of our cases, we were joined by someone who argued quite cogently that it would represent better management for Housing to sell this block and buy several blocks further out, and that would provide more housing. But the ACAT said, "No, that is a matter for Housing's management, and we can't rule on that. So strike that out."

If you lodge an appeal saying, "I really don't like this building; it's really ugly," they will say, "We don't rule on aesthetic issues." You have to have a planning issue; it has to be something written down so that they can say, "Does it comply with that or does it not?"

Mr Johnston: Fiona was suggesting—correct me if I am wrong—a triage system within government about a particular proposal, so it is a lot earlier than the ACAT system.

Mr Edquist: Perhaps, in Housing and ACTPLA, they need to look at these things and say, "Are we going to defend this or are we going to let it die?"

Mr Johnston: The Planning Authority already does quite a lot of that internally. I think they spend a lot more time worrying about what other government departments and instrumentalities have to say than whatever the silly old community might have to say. They do that sort of stuff. Yes, it needs to be broadened out.

MS CARRICK: They need to do it better.

Ms Thompson: The outcomes-based planning laws, as such, now—

Mr Johnston: They make it worse.

Ms Thompson: are making it more difficult and open to interpretation, and more difficult necessarily to draw a line and say, "This is yes or no," which adds to the additional anxiety for the community.

MR CAIN: John, are you saying you would be in favour of either changing the ACAT rules or legislating so that you cannot go to the ACAT unless it is about X, Y, and Z, to do with the plan?

Mr Edquist: That is essentially the way it works at the moment.

MR CAIN: Yes, but often you do not know until the hearing, or until you get to mediation—or not even then—and you get a decision where the ACAT says, "These three things were raised and we have no jurisdiction," or "They're not relevant to the actual decision in question." Are you in favour, and are maybe the rest of you in favour, of saying, "ACAT appeals can only be on the following bases," and putting that into the law? Is that what you are suggesting?

Mr Johnston: The question then is: what are the rights of objectors, of people who are directly affected by this law?

MR CAIN: That is what I am touching on. Are you suggesting that there might be merit in specifying what would warrant and be supported by an ACAT appeal?

Mr Johnston: We are basically saying—and John has already said it—that we do not think ACAT is the right vehicle for these sorts of complex planning disputes.

Mr Edquist: These are not legal judgements, so it is outside their field of experience and the way they have been trained professionally to work.

MR CAIN: They are merits reviews, so that is not a court, of course; they are just embracing an executive oversight review function of an original executive decision.

MS TOUGH: I have a quick supplementary based on what Mr Cain was asking, but I will phrase it slightly differently. You were saying, John, that when you get to ACAT, you have a directions hearing; you can make a case, and then you are told, "Sorry, these things fall outside the jurisdiction."

Mr Edquist: Yes, that has happened sometimes.

MS TOUGH: Yes, it has happened. Would it be—

Mr Edquist: The GNCA make a point of only objecting on flaws that they can attach

to rules in the rule book. That is the way it works.

MS TOUGH: But you do not always realise that until you have that directions hearing and you have made that case. Would it be helpful—I think it is what Mr Cain was saying—if, before that, there is some kind of written document that says, "If your objections are about the aesthetic of the building, or the X, Y or Z, ACAT is not the vehicle for you"?

Mr Edquist: Yes, or perhaps some kind of pre-sorting where you would be required to, say, produce a brief summary of your arguments, and ACAT could say, "That one is—

MS TOUGH: Yes, before it is listed for a directions—

Mr Edquist: justiciable but those two aren't."

MS TOUGH: Yes, something ahead of time.

Mr Edquist: You would have to have an appeal against that, too, and some people would appeal. A lot of what the ACAT does is just to give people a voice. They just want to be heard. They know that their position has been considered, and they are not that upset if they lose, because they have had their say. That is the social function of ACAT, which I do not think the lawyers there understand. It is there because people have always had the right to cry out to the king and say, "I've been mistreated." If they have a hearing, they are happy—or they are a lot happier than otherwise.

Mr Johnston: That is the benefit of having some form of public hearing, like this sort of format, and like the local planning panels in New South Wales. They have public hearings.

Ms Thompson: Again, if you had the pre-consultation process, you would negate a lot of that because you would have that voice much earlier in the process, so the appeal is not necessarily there because the appeal is only on a matter of fact, as to whether it is outside the design process or whatever. You have had that community consultation.

MS TOUGH: On that, if there was pre-DA consultation and all of this stuff was worked out, when it came to the end, would you be more comfortable with a much more limited right of review type situation where it could only be a matter of saying, "The planning law said this," and, legally, it did not match it?

Mr Johnston: Yes, I would, although I think there are some issues around the decision-making in the Planning Authority that need to be thought about at the same time. With the local planning panel model, they are quite often used as the decision-maker for more significant development, rather than just a review mechanism. That effectively cuts out the need for a further review. There is the Land and Environment Court that you can go to as a last resort in New South Wales, but that is a pretty heavy process.

MS TOUGH: Obviously, lots of applications go in for public and community housing, and not every single one of them is opposed. Have you ever put in submissions to

support them—not necessarily put in a submission to support, but have you publicly supported a development or encouraged a development to happen in a certain area, in your areas?

Mr Johnston: We have not really talked about the numbers. John's submission deals with the specific ones that have happened, particularly in Griffith and Narrabundah, where most of the small ones have been, and we have this Yarralumla one that has just happened. I went through the number of reported cases on the ACAT website—the list of all reported cases. There were actually only two decisions by ACAT in the last five years on commissioner for housing projects. One of those went against the commissioner for housing. The other one ended up being a rather complicated conditional approval because they finally conceded to make appropriate concessions at some point during the ACAT process.

Mr Edquist: There were some others. There was litigation before ACAT. A set of plans was lodged on 17 February 2024, and ACAT stamped it "approved" on the 24th, a week later. Any suggestion that ACAT is slow is not always true. The problem there is: why did it take Housing that long to accept that its original design was unworkable and to say, "Okay, we surrender. You're right. We're going to have to change that, change that and change that." If you do that, ACAT says, "Fine; off you go."

Mr Johnston: My point is that a lot of the public justification for this proposal is that huge numbers of public housing projects are being held up by the community. It is just not true.

Mr Edquist: Only ones which are grievously flawed.

MS TOUGH: On the flip side, with ones that are not being held up, have you, as a residents association or community council, said to members, "This is going in and it is really great; we should make sure it happens"?

Mr Johnston: If we found one, yes.

MR CAIN: Let us know if you find one.

Ms Le Couteur: We have certainly put in a lot of support for affordable housing, but the towers that are being built in Woden are not being built with public housing, only affordable housing, so we have not had the opportunity in recent years, unfortunately, to support public housing.

MS TOUGH: You are saying there have been no public housing applications that you have not opposed?

Mr Edquist: In a number of cases, after Housing was told it could not build a three-dwelling structure on some of these blocks that they had in Griffith, they have come back with a proposal to build two, and we have opposed none of those. We do not have a problem with it.

MS TOUGH: Yes, that is fine; thank you.

Mr Johnston: With most of the concerns in inner Canberra, so far, we have not had any greenfield-type development, new development, because we do not have the sites.

Mr Edquist: There is not much.

Mr Johnston: They are all redevelopments. Most of them, particularly the Griffith and Narrabundah ones, have been single-block redevelopments. The problem has been that they are trying to stack too much into a single block. That is what has been causing the problem. I am hopeful, and we have strongly said through ISCCC and the Kingston and Barton group, that the East Lake development will have a lot of public housing in it and that the whole thing should be designed with lots of public housing. We are very supportive of putting public housing in that new development. I do not know whether it will happen. There has been no commitment made, that I am aware of, to date that that will happen. That is what we have been pushing for.

THE CHAIR: I have asked that question in multiple hearings and there has yet to be any commitment.

Ms Thompson: In Mawson, there were two Mr Fluffy blocks. Obviously, that was created as RZ2. The government could not sell the blocks, so they then built government housing duplexes on both of those. As far as I am aware, there was no DA for that, and there were not any issues within the local community. Further around, on Shackleton Circuit, between Shackleton Circuit and Mawson Drive, there was a small park, and that was developed with government housing there. Again, that has not caused issues within the community, as far as I am aware.

Ms Hunter: With regard to Weston Creek, in my lengthy preamble I was getting to the point that we have a bit of a conflict. We do not get the opportunity to provide support. It is a very difficult space for us to work in, in Weston Creek, because public housing is often single level, accessible, two-bedroom et cetera. We have a direct conflict with the market there because we already have a lot of people who want to right-size within our community, and there is no development coming through Weston Creek that suits their needs. We sometimes have this initial conflict, anyway.

The point is that if we were able to engage in discussions earlier, and if we know that we need 150 houses et cetera, we can address these issues and support more public housing coming through. But you need to meet the needs of existing residents as well, which will help to free up our capacity to support new ones.

MR CAIN: I hate being controversial, as you are all well aware. The Greater Canberra group published an article recently. I did not know that they named people, but they referred to cranks who hold up developments. Obviously, they have a very broad rezoning of planning vision for Canberra. I am interested, in the context of this bill, as an example of reshaping Canberra in that sense, in whether you have any comment on that kind of zoning argument, as well as, perhaps, the critique that had been thrown at you.

Ms Hunter: Who is Greater Canberra?

MR CAIN: Howard Maclean wrote an op ed. There is a group—

Mr Johnston: It is a group that is in favour of—

MR CAIN: Up-zoning.

Ms Johnston: Up-zoning. They also—

Ms Hunter: A community grassroots-based group? Is it an organisation?

Ms Le Couteur: It is a not-for-profit organisation. Grassroots—maybe some different pieces of grass!

MR CAIN: It depends what the grass is—where the grass is coming from! Who is growing the grass? That is a key question, actually.

Mr Johnston: There have been at least three letters responding to that article, that I am aware of, that have been written to the *Canberra Times*.

MR CAIN: Given that we are into flow-on time here, I thought I would throw that in.

Mr Edquist: It is quite clear that they are wrong. They suggest that these appeals are frivolous or vexatious et cetera and have no merit. That is simply not the case. It is an easy thing to say. The author of the letter does not always have to tell the truth and so on, and the *Canberra Times* do not write back to people and say, "What's your evidence for these wild claims?" Perhaps they should. He is just pushing a specific agenda. He uses judgemental language like "wealthy people," or "people who live in wealthy suburbs".

Mr Johnston: On the broader issue, about up-zoning, I think we will all be back here again several times, looking at Territory Plan variations and things. What I am aware of, because I have been somewhat involved in it, is the work going on about the missing middle housing design guide. I understand that will be put out to the public sometime in the next two or three months, fairly imminently, together with a raft of rezoning proposals allowing anything up to three- to four-storey apartment buildings in RZ1 areas. I would suggest that we might need to park that one for future discussions.

MR CAIN: Obviously, we are trying to avoid controversy here. I am interested in your views, of course.

THE CHAIR: We very much appreciate the well-considered submissions from everybody; we have read them. John, you mentioned that, for one of the matters you were involved in, Housing ACT did not show up to the ACAT hearing. Do I have that right?

Mr Edquist: Yes; that was 77 Captain Cook Crescent. They decided before the hearing that they would abandon the DA. They told ACTPLA, but they did not tell ACAT. I think we got a letter the day before, and we did not quite know what to make of it.

THE CHAIR: You have been through a few matters now; are there any other instances where Housing ACT maybe has not been assisting ACAT to do its job quickly, due to Housing ACT—

Mr Edquist: Not since that time.

THE CHAIR: Just the one? I am really pleased that was a one-off.

Mr Edquist: I can understand why they abandoned it. They never officially said why, but there were problems with it. From their own admission, in the statement against the criteria, their architect admitted that they had penetrated the front, the side and the rear boundaries. There were three units, and you are supposed to have the principle of private open space of at least six clear metres square, and none of them did.

I think what happened was that, after we appealed, someone sent out a letter we had written to ACTPLA—objecting, originally—to their architect, and said, "Can you fix these?" and he must have said, "No." They said, "Okay, we'll pull the plug." That is just a hypothesis. They will not say anything about it.

MS CARRICK: If third-party review rights are taken away, do you think there will be adequate checks and balances for ensuring the quality of the public housing?

Mr Edquist: If there are no appeals, I do not see how. Housing, obviously, does not have anyone within the directorate that looks at the proposals they get from their architects and who says, "Are you sure that this fully complies?" I would have thought that, as part of management, you would say, "You don't get your full fee until this actually goes through."

Mr Johnston: From a community point of view, this removes the last vestige of checks and balances in the system. I said in my introduction that it is giving the Planning Authority dictator powers, and it literally is. That is a quote from Khalid Ahmed from the school of governance at the University of Canberra.

Mr Edquist: The result will be that there will be more non-compliant housing, which will definitely be second-class. I do not see why, just because you are a public entity, you do not deserve a proper—

Ms Thompson: Some of the perception out there in the community is that this amendment is being used as a cloak to try and wedge the issue. If you are against it, you are against public housing and health infrastructure, or you are against it in my backyard, and that is not the case. What we are looking at is where it is not within the regulations and the law.

Over time, the community's trust in the planning processes in the ACT has been eroded, for various reasons, including, DAs being approved outside the planning laws. As I mentioned before, the outcomes-based planning is more difficult to define. Removing that appeals process or having an earlier appeals process, as we were saying, is doing a real disservice to the community and taking away their voice. That goes to your point

about it becoming a dictatorship.

THE CHAIR: On behalf of our committee, I thank everyone for coming in. That was a very lively session with a whole lot of evidence. We did not have any questions taken on notice. You will be receiving a copy of the uncorrected proof *Hansard* transcript. Let us know if there is anything that you think is incorrect. The secretary can deal with that for you. We will now suspend for a break

Hearing suspended from 1.00 to 1.35 pm

FOX, MR BEN
PARKES, MS JOCELYN
VERA, MS LORESE

THE CHAIR: We welcome Jocelyn Parkes, Ben Fox and Lorese Vera. Thank you very much for joining us. I might get you each to state the role in which you are appearing. It might be that "I am appearing as an individual".

Ms Vera: I live in MacArthur Place, O'Connor, and I am appearing for myself and for my disabled neighbour Jenny Field.

THE CHAIR: Thank you so much. Lorese, did you read the privilege statement, and do you understand and agree with it?

Ms Vera: Yes.

THE CHAIR: Great.

Ms Parkes: I live in MacArthur Place. I am appearing as an individual, and I have read the statement as well, thank you.

THE CHAIR: Thank you very much.

Mr Fox: I also live in MacArthur Place. I am representing myself and my partner, Kate, and I am here as an individual, and I have also read the privilege statement and understand it.

THE CHAIR: Thank you so much. I will just remind everyone of the obligations and protections in that witness statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. We will begin. We are going to start with a short opening statement.

Ms Vera: Yes, okay. My name is Lorese Vera, and I have lived in my public house for about 29 years. My neighbour Jenny Field has been in hers for about 50. I have permission to speak for her today, and she and I are in complete agreement with our feedback on the proposal.

I am shocked that a Labor government would seek to remove the rights of the community to comment on public housing development, or any development for that matter; a party created with the philosophy of working for the people and consulting the people. This is democracy 101, or have you forgotten it?

There must be checks and balances in government procedures, and part of the checks and balances in the housing should be the community who are most affected by it. I do not accept as sufficient the excuse that the feedback slows down development. That is its whole purpose. Tough for the developers that would love to have a completely free hand—and we have seen many examples of how badly this goes wrong when developments are made for the profit of others, disregarding not just the concerns but the safety of tenants, owners, and those who live in the shadow of such developments.

Government should not have a completely free hand either. Has this government forgotten that it works for the people and not the other way around? It is not the fault of the people that there is currently insufficient public housing and an apparent urgency to build such. Decisions by this very government, historically, are at fault and we all know that.

Jenny and I are not against the development in our street, but we are against some of the ridiculous features of the development. With our combined history of almost 80 years in this tiny cul-de-sac, we are in a position to be able to judge this, and our concerns should be taken seriously both for our comfort and safety, and of course for everyone in the street, whether in public or private homes.

Some of the decisions regarding this development would, I think, be disastrous. And where would we be without the right to point these things out?

THE CHAIR: Thank you very much, Lorese, and thank you to Jenny as well for that, and Ben, thank you for tabling your opening statement.

MS TOUGH: This is to all three of you. So I understand that your street is zoned RZ4. It is only a block or so back from the Northbourne Avenue transport corridor, so in theory anyone could come along and do quite a large development in that street, public or private.

I am just interested in what design elements of the public housing development in particular you are opposed to, and if a private developer came along would the same issues be raised with them through the same processes?

Ms Vera: Of course. And we are not one street back. That is David Street.

MS TOUGH: Sorry, it is two streets. Yes, sorry.

Ms Vera: It is a very, very tiny little cul-de-sac. The proposal is to build 11 units where there were two existing places. And that is our main concern: the amount of people. That would be 11 more cars, or more if families own more than one car. That would be 33 garbage bins in addition, and we do not have any paths. It is really an old suburb, so the grass and plants sort of go down to the gutter in most cases.

Sometimes we all take our lives in our hands. I have got four grandchildren, you know, going up and down the street, and there is no—from the reports I have got back—there is no easy way to collect the rubbish. There was this crazy idea of putting it in front of the existing public-housing houses. What? Because they could? Because we are second-class citizens? That would be my home and Jenny's, and we have both worked on our gardens for 50 and almost 30 years.

That would be a complete eyesore, not to mention the noise of said people. What would they be doing? Trotting up the road or wheeling their wheelies up the road. God knows.

Ms Parkes: Were you consulted about those at all? Were you aware?

Ms Vera: No, no, absolutely not.

Ms Parkes: You found from FOI documents that those sorts of proposals were being put forward?

Ms Vera: Well, I only found out by being told by others in the street, yes. I think that is the main thing.

Mr Fox: As well—you can have a look—we have already made submissions against the development approval, addressing precisely your issues. I mean, we personally have put those in, addressing things like scale, the new Territory Plan—which is less than a year old. So, to then be talking about removing a safeguard like this from the Territory Plan when the ink is barely dry on this quite significant overhaul of the whole process—

And, for example, this development itself was not even flagged as a significant development until we actually raised issues and questions with the process around it due to the size and scale of it in the context of the cul-de-sac, which is all two storey currently and quite dense, and there are already a number of private developments that have gone up and none of them have exceeded the previous Territory Plan or, indeed, some of them are coming under the new Territory Plan in a sort of similar scope and a scale as to this. We are engaging with that, on that kind of context.

MS TOUGH: So you are saying, yes, ones that are coming through privately under this new plan; you are also having a look at the size and how they fit the scope of the block or of the street?

Mr Fox: It seems like you are suggesting that there should be a different set of rules depending on who is applying for the process.

MS TOUGH: No, sorry, let me rephrase. I think you are saying that the ones that are there have been done under the old system so they do not meet what could be in an RZ4?

Mr Fox: The current Territory Plan is less than a year old, and we are now operating under that Territory Plan. All the responses that we have made and that have led to this process have been made within that Territory Plan and within those contexts, and the issues and the problems with this current development and the proposed removal of this safeguard are within the context of the current RZ4 and the current Territory Plan as it applies to RZ4 in this special area.

Ms Vera: The thing about it is that there is actually no private development as such in the cul-de-sac because many years ago when they were built in the late 50s—and because I have lived there for so long I know a lot about the history of the place—they were all private, public, private, public.

Jenny and mine are the only public ones left. Anyone who has bought them privately, has not wanted to mow them down, because they are such iconic buildings, and they renovate and make them look just beautiful. But this box that will sit there with 11 units is totally out of character. I mean, there are no imminent private people who are also going to want to do that.

The other thing is that only some years ago we were worried about how long they were neglecting those blocks. I did write to the minister and put to her, considering the other program that was in place about moving people on and selling old stock, was that—it did not mean to, but it effectively targeted women over 50; homeless women would be most affected. I suggested that that would be a fantastic place to house older women, well over 50. I suggested something there.

That would be much better than 11 units of mixed, with possible problems. I do not think that has been thought out very well. I think what has been thought is let us create as many as we can in there because we need more public housing, but they have not thought about all of the other issues that that can bring up.

Mr Fox: Can I add to that? I wanted to raise as well in relation to that point that you brought up, that the department of housing also made a statement that used a similar false equivalency, bringing up that the legitimate questions and concerns about the ACT government's processes were the same as opposition to government housing, and that is not the case.

Everyone here supports the restoration of public housing and the increase of public housing in the area—within the Territory Plan, and that sort of appropriate scale and context, and the safety of the space—but it is really disappointing to see a false equivalence being put forward without evidence by Steel and Berry and justifying this legislation change in the removal of the appeal to ACAT by saying that all these complaints are objections to—and essentially demonising—public housing. But actually, from my point of view, they are legitimate concerns that we are raising about government process, and that that is not NIMBYism; that is, in fact, democracy. So this is an attempt to remove what is in effect a democratic safeguard on a process from people who have lived experience in the sites that are being engaged with and designed and planned, which is, to my understanding, the intent of the Territory Plan and the new Territory Plan: to actually increase and improve these kinds of safeguards and build trust and support for these kind of developments.

MR CAIN: Look, I am interested in your views on the consultation that has been undertaken, from your point of view. I know Jocelyn, you have touched on that in some detail in your submission, but I do want to reflect, and I think the point is well made, Mr Fox, that obviously we have a relatively new whole planning system and this would be a fairly significant change to that already. Do you have any comment on: is the government acknowledging that their overhaul is just not working, and so they are really kicking in major changes to that because what they have taken the community through is just not suitable?

I am particularly interested in your view and your personal experience with the consultation, and on your expressing your concerns.

Ms Parkes: In my submission, I made points about the difficulty I have had not only in getting relevant information from the department of housing. I think our main thing is that this just too big a complex for the size of the street, in terms of infrastructure and access. It makes access unsafe.

In the development application, Housing said that transport had given approval for

waste removal. Under documents I have got under FOI from transport, that seems to be false. There is a purported approval, but that method had already been denied approval months earlier, and at the time the application was filed they were still putting other proposals forward, none of which were ultimately approved.

So in my personal view, this development application should never have been filed in the first place or accepted by planning. When I interacted with planning, I got incorrect information on a number of occasions that I have outlined there. I am still trying to get documents under FOI from Housing. They had two extensions from the ombudsman, failed to comply with conditions.

Just this last week, it is now a deemed refusal—two deemed refusal decisions—and I have had to go to the ombudsman for review. I made complaints about the conduct of Housing and transport in making misleading representations in the development application. I have had no response from either transport, Housing, Minister Berry or Minister Steel.

I have raised serious concerns that have been completely ignored. So I am pulling all levers that I can to get engagement, to get response and to get information, and I am getting nowhere. So tribunal review is an important way to encourage good government decision-making, to have their actions scrutinised. If that is taken away, that is an important lever that helps ensure access to justice that we are not going to get.

So at the moment, I am very disappointed in the way this has been managed by the government; all three agencies. No one will engage with me. I am not getting important relevant information. And when the next 10-day public consultation period comes up, if I do not have that information at that stage, they have made clear they are not obliged to take it into account. I asked for extensions. "If the consultation period ends and I have not got the documents, will you give me an extension?" Several inquiries: no response. So my experience with all three agencies has been extremely disappointing.

MR CAIN: So are you suggesting that removing ACAT appeals would actually be encouraging the department to be less concerned about proper consultation rather than driving them to prove—

Ms Parkes: Yes, they are not concerned now. That is our experience.

Ms Vera: Of course, of course.

Ms Parkes: And so Minister Steel can make the final decision, and he is the minister for both planning and transport. He is not responding to my concerns or my complaint. He can make the final decision, and the only recourse we have is to seek judicial review. Now everybody knows that that is not a viable option.

MR CAIN: In the Supreme Court, of course, yes.

Ms Parkes: The cost implications make it prohibitive. And you can only seek review for error of law, not merits. So really, we have got nothing. There will be a decision, they will not engage with us, which they have not done to date, and we will have no recourse.

MR CAIN: So you are suggesting perhaps—and I am not trying to put words in your mouth—that removing ACAT appeal rights would mean the executive could be tempted to think, "Well there is going less scrutiny on how we deal with these things going forward"?

Ms Parkes: Absolutely. In fact, where I am, at the moment I think they are going to have to amend their design—I presume, because I cannot get any information from Housing on what they are doing at the moment. This is the third set of plans that they are spending taxpayers' money on. And I think they are not going to: they are going to wait on putting that in until they pass this bill so that they will be able to make a decision and there will be no review.

Now that might be cynical in one sense. But at the moment, it seems a very real possibility to me. And I work in a commonwealth government agency, and have done for 25 years, and I have got to say: I have been shocked at how this has been handled. I am shocked that ministers have not responded to me; neither agency. And, you know, the Robodebt royal commission showed that effective merits review is important to protect individual rights and true access to justice.

And all commonwealth agencies are very careful to ensure that their processes and policies are in line with the recommendations of the royal commission. And here we have the ACT government going to opposite direction. We do not need oversight. We do not need external scrutiny. We do not need an independent third-party review. We do not need to engage with the public, the community. It is outrageous.

MR CAIN: And perhaps if consultation was just going beautifully at every stage—

Ms Parkes: Exactly.

MR CAIN: There might be an argument for this. But not certainly if it is not going well.

Ms Parkes: And the way it has been portrayed in the media by the government is: you have got rich people in inner north suburbs who are opposed to having public housing near them. That is not the case in our street. Our street is originally all public housing.

Ms Vera: It is an excuse.

Ms Parkes: It is an appropriate mix. And here you have, we have like nine blocks with a duplex—so two townhouses on each—and on one block they want to now almost double the residential capacity of the street by putting in 11 units. Now okay, the legislation says it does not matter if it reduces the value of your property. Fine, I live next door to that block. And I have all these other concerns.

But if it comes down to me personally, because the verge is so small, because it is just meant to be a driveway for two townhouses, what they are going to do is they are going to have all the public access and the driveway facing my house. It is going to be an excavation for underground parking. So the construction that goes on for who knows how long and the access to the street—which effectively is single lane most of the

time—that is all going to be facing me: all the windows; I have got all the public entrances and exits, the driveway, the lights, the noise, the privacy.

But that is really a secondary thing. What I am most concerned about is the process; the actual conduct of the government. That is what really—we thought they would be sensible and maybe double the capacity: four townhouses. Great. Four more families.

Ms Vera: And I thought they mentioned that. It was the first—

Ms Parkes: And so we were shocked. So we have known for years. They have had this site since 2017. And FOI documents from transport show they initially wanted to build eight units in 2017, from planning, and then they did not go ahead with the application. I do not know why. But I presume they were waiting for the zoning laws to change. They sat on it for seven years. Then they wanted to build 14 units, three stories. Transport said no, we cannot remove the waste. Then they have come down with 11 units. They still did not get approval for waste removal but said they did. Both agencies said they did. So it is hard not to think that they are just trying to maximise the number of public housing units to fulfil election promises and to get relevant commonwealth funding.

Again: sounds cynical, feels true.

Mr Fox: Can I add to that, or do you want to—

Ms Vera: Just quickly. As far as consultation, there was zero consultation to me, and Jenny and I are the only public housing people left in the street. These guys were contacted because they live next door. But what about everybody else in the street? What sort of consultation is that?

And if they want to maximise support from the community about housing, I am all for it. I live in a public house. Would they not have been better to have Jenny and my positive input, as well as some other issues? Why not consult with me?

The horror of suddenly one day a big machine coming and digging up the front of my place, without me being told that they are going to build some awful building to house garbage bins, I mean: ouch.

Mr Fox: Firstly, the legislation is proposing to remove one of the few available time and cost-effective safeguards in the planning process: Based on my, and my partner Kate's, current experience with the process, these safeguards are essential. So, it is feeling like the process is not being operated in good faith, to be honest from our point of view.

So, the first consultation was on the plans for this initial proposal, which, from our reading of, it breached the Territory Plan in a number of fairly clear technical ways, and in a number of also fairly clear qualitative scale and context kind of ways. To further kind of erode trust in the whole affair as well: the week before the rules on tree protections changed over, the block was completely clear-felled of mature trees in quite a cynical kind of bad-faith operation to avoid impediments to what would be maintaining this green infrastructure or the climate protection infrastructure in this area.

As a result, over summer there has been a lot more direct sun coming through onto the central tarmac of the cul-de-sac. That did not feel like the spirit of it. And then now while we are supposedly engaging in the consultation process, there is now the presentation to remove the appeal to ACAT. Presumably now, as Jocelyn said, following that sort of bad-faith model, it is likely that the Assembly will wait until the laws have been changed and then put the next stage in. And then there will no appeal to ACAT.

So it does not feel like best practice of design, facilitation and stakeholder management, or something that will really contribute positively to the confidence and ongoing quality of public and private housing stock across the ACT. It feels kind of poorly handled to be honest.

MR CAIN: Thank you.

THE CHAIR: Excellent. You have actually covered off on all of my questions.

MS CARRICK: I was just going to ask about timeframes, because often this bill is about ACAT taking too long because we need to get people into their public housing quicker. So are you able to tell me if you think that the upfront processes could be quicker, before we even get to ACAT? Because there is a range from the beginning. How long has this issue been going on? You said 2017. Is that when the previous tenants left?

Ms Parkes: Yes, that is when the government acquired both blocks. They initially had both blocks. They sold one to a private person back in the late 90s. And then they bought it back in 2017. So we knew from that date they were going to redevelop it. Fine. And then nothing happened for years. And I tried to seek documents under FOI at that stage. And Housing relied on some legislative exemption we cannot identify, about where public housing is located, so, "We will give you nothing". And it was only this time, I said, well in this development application you have identified it is public housing so you cannot rely on that exemption. Six and a half months later I still have nothing. Again, it feels like they do not want to give me information which I would like, which is relevant.

The sign went up in September. We have four weeks within which to comment. So the first consultation period is longer. And then, after your comments are in, they give that back to the applicant—Housing, in this case—and they have the chance to review all the comments.

Transport came back and said, "No, we do not support it", when they had represented they did in the application, so presumably they have to amend it. So how long that is going to take we do not know, and we do not get any notice until the sign goes up of when that 10-day period commences. Now, 10 business days? A whole new design, in my experience of getting information from planning, from Housing, from transport: like, what is the point of that period? Like what new information will we have, apart from the plans themselves? So really, it feels like it is not real consultation. We have consulted on plans that now presumably—I do not know—are not going to be proceeded with, and there will be new plans and we will be given 10 business days.

MS CARRICK: I am interested in what can help reduce the timeframes from the beginning till the end. Consultation is one thing. Presumably that could help mitigate?

Ms Parkes: Well, delay is not in the consultation because you have got four weeks and two weeks. That is six weeks. The rest of the delay is all the ACT government.

MS CARRICK: And I guess from 2017 we used to have pre-DA consultation—not on every development, I guess—but it is being able to meet and actually discuss a proposal, and you know, "codesign" is a big word these days, we get that. But I guess my question is about timeframes because one of the reasons for this bill is to reduce the timeframes at the end of the process. To get on with it. I am asking where you could maybe reduce the timeframes, from 2017 until you get to this stage?

Ms Parkes: I think your point is good. If there had been some genuine consultation—it feels to us from the documents that no-one ever even came to look at the street. We have said to the architects, "Fit whatever you can on this site", and when *we* saw it we were like, hang on, they were not aware of like the permitted parking, how that narrows the street. So there was a false traffic assumption. They just said, "Oh it has only got this many residents so there is lots of traffic capacity". That was it.

Mr Fox: Breaching the solar envelope as well.

Ms Parkes: So if people had come and looked and really thought about it—like the whole planning process says on their website: "this is for better community outcomes" and "genuine consultation". Is it? If they had done that, we could have raised these concerns and they could have saved that time, and importantly, money. They are on to the third set of plans now because it turns out we did have some genuine comments and concerns that needed to be taken into account.

But mind you, if I had not gone to planning and asked, "Where is that approval that is required to be attached to the application?", I never would have known that the waste removal was never in fact approved and the application should not have been submitted.

Mr Fox: Can I speak to that as well? I am concerned that the premise is that, sort of, more and faster is a success. It does not seem—like this has been a public housing precinct since what did you say? The 1950s?

MS CARRICK: 1956, I think.

Ms Vera: Yes, 1956 it started.

Mr Fox: So that is the kind of time window that we are on, and the potential for building and getting units moved—you know, producing housing units faster at the expense of other public housing units or the ongoing success of those public housing developments in whatever the various criteria under the Territory Plan, and it is very comprehensive.

If it were sticking within those very clear, very well thought out, very well produced guidelines, then the processes would be quite smooth and punctual and moving through. But the issue is that I think Housing ACT, and the architects and designers

commissioned directly by Housing ACT, are not really operating comfortably within the kind of design along the layout of the Territory Plan. They have kind of pushed things beyond and bigger, larger, and as you are talking about as well, faster and quicker, and those things are not necessarily effective.

MS CARRICK: And how do you think you would be better at ACAT? Because the law says that the government just has to consider the guidelines and so they are likely, if you actually went to ACAT, to say, "Well, we have considered the guidelines, and we think this is a good outcome". I do not know how the law would work under a new outcomes-based model, but where do you think the checks and balances will be if third party appeal rights are removed?

Ms Parkes: I do not see that there are any checks and balances at all. I have not been able to engage any checks and balances myself, and I am very familiar with government decision-making and administrative law. If I cannot get any engagement, how does anybody else who does not know these processes? I mean, look, maybe it is not relevant but it has been very stressful for us already to date. It is significant that this is our street. These are our homes. It is important that it is done properly and lawfully and fairly.

Mr Fox: You are asking us to comment on something that we do not know. As I mentioned earlier, the Territory Plan is less than a year old. This is, to my knowledge, one of the first significant developments to actually go through the Territory Plan.

We have not even completed the process. We do not actually know how this process would play out. Me personally, this is the first time I have engaged in this process. It is not a particularly balanced field. You know, Housing ACT and planning and the architect working on the project are all very well versed in how it is going to happen and play out. But in terms of my understanding: I do not know, and I have not actually gone through a process like this, and have nobody else to talk to who has gone through this either because the process is less than a year old.

THE CHAIR: Thank you so much for coming in. I am really sorry about your experience. It sounds extraordinarily stressful, but thank you for bringing in your neighbour's story too. That is really valuable to have had that contribution.

We did not have any questions on notice. The secretariat will be sending you an uncorrected proof of the hearing so you can have a chance to read that and just let us know if you think anything is written down incorrectly, and thank you very much for your time.

Ms Parkes: Thank you.

Mr Fox: Thank you.

Ms Vera: Thank you.

Ms Parkes: This has been encouraging. It restores our confidence in government.

Hearing suspended from 2.07 pm to 2.30 pm

CHICK, MS RACHAEL, Senior Solicitor, Environmental Defenders Office
COPLAND, DR SIMON, Executive Director, Conservation Council ACT
MAIER, MS JOANNA, Solicitor, Environmental Defenders Office

THE CHAIR: Welcome EDO and Conservation Council. We have circulated a privilege statement which contains rights and responsibilities. I will just remind you of those now. Witnesses must tell the truth. Giving false or misleading evidence will be treated seriously and may be taken as contempt of the Assembly. If witnesses could state that you have read and agree with that privilege statement.

Dr Copland: I am sorry I cannot be there in person but I have a bit of a cold and did not want to infect anybody. Yes, I have read and agree to the privilege statement.

Ms Chick: I confirm that I have read and agree to the privilege statement.

Ms Maier: Thanks for having us committee. I confirm I have read and agree with the privilege statement.

THE CHAIR: Thank you so much for coming in. If anything comes up, if there are any questions taken on notice or if you need to say anything else you can mention it at the end and we can have an option to table more information if we need to.

We have had a number of really excellent submissions from these witnesses, and a few others like Friends of Grasslands, about environmental and First Nation's cultural rights maybe needing a different kind of treatment when it comes to public housing and health facilities and I would really love to tease that out a little bit. I have some specific questions but I actually think I am in the hands of experts here. Can we get some reasons as to why maybe not all third-party appeal rights are the same and maybe why First Nation's cultural and environmental third-party appeal rights might perhaps merit a different status? Rachael, should we start with you?

Ms Chick: Sure thing. So the EDO is generally of the opinion that community public participation rights for environmental matters for the whole community are extremely important. They facilitate that decision-making by decision-makers is transparent and it builds better community trust in the planning framework itself. In terms of a particular status for First Nation's cultural heritage and for certain environmental matters, it is not something that we have specifically turned our mind to with respect to this bill, but as a sort of general proposition, as a matter of free, prior and informed consent, First Nation's peoples must have the ability to give free, prior and informed consent to developments and actions that are going to affect their traditional obligations and custodianship.

THE CHAIR: That was excellent. I am wondering if anybody has any thoughts or experience on which kinds of ecological and environmental issues you may be engaged with and how many times those have gone through ACAT in recent times? Is that a useful thing to have a chat about?

Ms Maier: I think that would be something we would likely need to take on notice to go through the part where we considered that specific matter as we did not go into that level of detail in our submission, but we are happy to take that on notice.

THE CHAIR: Only if you have time to take it on notice and if we do not hear back, that will be okay. We do not always give homework to our community members. It seems a bit mean. Another thing that leapt out quite strongly to me in a lot of the environmental submissions were habitat and ecological sites flagged around the North Canberra Hospital and that came up a few times. Is that something that any of our witnesses here have turned their minds to, as to whether some of that mapping and whether those ecological communities and ecological sites around the hospital need to be looked at?

Dr Copland: I can speak briefly to that. I mean, we did not put that in our submission but our submission was very short. I can imagine that site does have quite a few areas of ecological importance being very close to a quite extensive reserve system there and we all know it is quite a high density area of bush. While I cannot speak to specifics other than what they have put in their submissions, I imagine there would be some concern about that and ensuring we get it right.

I just wanted to go back to your initial question. I think we maybe step back to the context that the ACT is facing a crisis in our biodiversity with more species being put on to endangered lists. We have significant threats in particular to natural temperate grasslands and to box gum woodlands which are often areas that get developed on because they are in flat areas.

So the concern is that we are facing what we consider to be "death of a thousand cuts." Projects get approved because they only take up a small amount but then every project takes up a small amount and eventually these ecosystems are disappearing very quickly. So while we are generally supportive of the intent of this legislation, we do have concerns that it will just perpetuate that and allow developers to go through with the excuse of, "Oh it is only a small amount of this environmental area" and there is no opportunity to step back and review and to get the community involved and have these third-party rights involved in this very important question. We think we should be taking the environment as an utmost priority here and that is why we wanted to have this exemption laid out and to still appeal on these particular grounds.

THE CHAIR: Are you concerned that if we waive third-party appeal rights on environmental matters that we will not be taking into account the cumulative impact of all of those decisions? Is that a concern?

Dr Copland: Well, this is a broader question, but the current legislation does not do that to the extent that we would like it to, to really take into account the broader accumulation of these impacts. That is both local and federal legislation, but this removes an important opportunity for community groups to be able to really point that out and to have decisions based on that. I do not think our current planning rules do take that into account. We have seen that through multiple decisions that have been made recently where those cumulative impacts have not been really considered when assessing individual projects.

THE CHAIR: We had witnesses in our last session point out too that the other matter that is already listed as not subject to third-party appeal rights was the light rail but that has already been through a number of EIS, EPBC and environmental processes. Is that

a concern to you that perhaps ACT matters will not go through that same sort of process if they just get automatically listed as waiving appeal rights?

Dr Copland: Yes, and that is something that we have put in our submission, our concern about whether they will go through those similar processes. We should ensure that anything does go through those important processes. Now, naturally, there are major projects that have impact on matters of national environmental significance and they would have to go through that but we also have our own environmental laws. We want to ensure we are ensuring that everything goes through those important processes.

MS CARRICK: Thank you for coming. My question is about consultation and with environmental matters. These are typically suburban blocks public housing is on. It is very hard to monitor the environmental impact on suburban blocks, where there is multiple and there are many. Where there is an environmental impact and the trees are taken, it is very hard then to go to ACAT. So my question is, would it be preferrable if there was upfront consultation so you can see what the environmental impact would be on a block and be able to express a view before a DA goes in, as opposed to trying to deal with things afterwards?

Ms Maier: Are you talking about developments in the context of territory priority projects that already have that declaration process or developments generally?

MS CARRICK: The public housing that they want to change the status of to be all territory priority projects. I notice, and I think it is in your submission, they do have a note in the legislation that talks about public housing, but that is just a note. It is not considered a territory priority project at this time and each individual block that goes through for public housing is not automatically a territory priority project. That is why they want to get the broad category, so they can just wrap them all up into the broad category.

Ms Maier: Yes. The purpose of including that note in my submission is to note that the declaration process provided for under section 218 of the Planning Act already includes those specific types of developments to have that declaration made in relation to them. As the chair referenced earlier, and Simon referenced earlier, that process has an additional layer of consultation that does take place during that declaration process. That will be removed where there is a blanket declaration that would apply to any project that would meet the definitions outlined in the proposed sections 217A and B of the amendments. So any projects that meet that definition could, in theory, if these amendments are to be passed, be automatically approved without that further consultation, which would remove that opportunity to identify potential environmental risks that the community are aware of but the government is not.

MS CARRICK: Yes. I guess my question is, for environmental matters, if they remove the third-party appeal rights, where are the checks and balances on the environmental matters? If there is no consultation—or we do not have consultation where you actually have a conversation, you just put in a representation and it goes, it is one-sided—so if there are no discussions and there are no opportunities for appeal, where are the checks and balances on your environmental issues?

Ms Maier: That is one of our primary concerns with the proposed amendments, that

third-party consultations and appeal rights offer a degree of probity in government decision-making and accountability. There are also concerns with projected plans, that is territory priority projects, when the Minister for Planning is the decision maker as they can make decisions that are contrary to the conservator's advice, subject to certain circumstances being applicable. That is another concern of having blanket declarations on projects, as it removes an additional check for environmental impacts on those projects.

MS TOUGH: My question is around mostly the Environmental Defender's Office, but please, Simon, jump in if you also have some thoughts. Reading the summary of your recommendations, you are happy with what currently exists in section 218 where the minister could come in and declare something and you would be willing to see that expanded to affordable housing beyond public housing, recognising there is a need for more housing. Your concern would be getting rid of 218 in the new system—to just make that blanket declaration instead of considering each individual project—even though the minister has the power if he really felt like it, to sit there and do that for every single application that comes through now? Is that because you prefer it to be on individual ones so that the third-party rights are there for the environmental protections? And if all of a sudden, if the bill does pass and it was blanket no third-party appeal rights, but there were specific things you could appeal on environmental concerns and First Nations considerations, would that be more amenable to you? Sorry, that was a really waffly question.

Ms Maier: I will address the first part if that is okay. The concerns with the removal of—sorry, I will address the last part first if that is okay. The concerns with the removal of appeal rights would be somewhat allayed by including specific sections in the legislation relating to environmental or other public interest or cultural matters. I am interested to hear whether those potential exemptions, if available, would be able to be extended to the allocation of section 218 in projects that have gone through the declaration process more generally. I am sure you are aware of the first reference by the chair previously, not all third-party appeal rights are on private or amenity grounds. It does offer an opportunity to ventilate environmental issues about what is definitely considered during the assessment process. Could you repeat the first part of your question?

MS TOUGH: Yes. It was about the getting rid of—sorry, no, the first part of the question was that you have talked about extending what is in 218 of the existing Planning Act to include affordable housing, not just public housing.

MR CAIN: If it passed.

MS TOUGH: If it passed. So if the bill was to pass, would you be comfortable with that extending still to affordable housing instead of public housing, noting that under 218 the minister right now could just sit there and individually go yes, yes, yes, they are all priority projects. If the bill passed and they were all priority projects by default, would you still be comfortable with that being affordable housing?

Ms Maier: So to clarify the point on affordable and/or public housing, the point I am trying to allude to is that, as a matter of legislative drafting, the definition in the proposed section is somewhat ambiguous and it does not necessarily reflect what is in

the explanatory statement. In particular, my concern was with the last line of clause 5 of the explanatory statement clause notes, which does not seem to reflect the policy intent to the extent that affordable housing and community housing can also be administered by the housing commissioner in accordance with their obligations under section 11 of the Housing Assistance Act. So, I think there needs to be improved clarity around what actually constitutes public housing, and if it were to be passed, the scope should not be broadened, it should be more clearly defined in the legislation.

MS TOUGH: So, it is more clearly defined if it is just public housing, whether by public housing it means public, community, social, housing?

Ms Maier: Yes. A housing definition has the broadest definition in the Housing Assistance Act.

Dr Copland: Would I able to—sorry.

MS TOUGH: Jump in, Simon.

Dr Copland: Would I be able to respond to the first question or the second part of that question?

MS TOUGH: If you can remember it, yes.

Dr Copland: Thank you. I was listening during the conversation. I think we here at the Conservation Council understand the intent of this legislation, and that is over concern of particular groups or individuals who may use this ACAT process to spuriously drag out the development applications for much needed public housing, and we understand and respect that desire to really speed up this process to allow public housing to go ahead. What we do not want to then do is at the same time remove the opportunity for genuine issues that need to be raised to be not to be able to be raised at some point in time in a general consultation process. That is why this ability of carving out some specific issues that can still go through this process, and particularly we are saying environmental or cultural heritage issues, is probably a happy compromise to stop the particular people, in particular groups, the "NIMBY groups"—although I increasingly hate that term—who are doing this because they do not want to see public housing in their backyard versus groups that are genuinely concerned if public housing is being proposed on a natural timber grassland which may have an impact on that ecosystem. I think if we can find a compromise between those two things, then I think we will be quite comfortable.

MS CARRICK: I wanted to ask on that, some people might go to the ACAT for their own reasons, but do you think that there are any cases at all where somebody might go to ACAT for a good reason about the development itself, that it does not comply with the law or the guidelines? I mean, do you think that there are any times where it is legitimate?

Dr Copland: Well, as we were saying, we believe that it would be legitimate to be going to ACAT for concerns in this particular area. There are lots of reasons people go to ACAT. I cannot go through all of the individual cases but what we are saying is, if we understand as a community that public health projects and housing projects are of

importance, of state importance, which I think we all agree they are, that sometimes those potentially legitimate reasons that may have existed for the private development may not be as legitimate in this case, or may not be as important, but we think that environmental and cultural heritage ones are still of a level of importance that that option should be available.

MR CAIN: Thank you for your submissions. It is interesting in your two submissions—I mean, ordinarily when we get grouped hearings the people are expressing very similar views as we have already seen very much this morning, but in this case we have sort of qualified support for different positions. The EDO are sort of saying there is already capacity to declare projects territory priority projects and there is an erosion of appeal rights for the community, and then Simon, we have the Conservation Council sort of saying qualified support, yet each of your organisations has very similar, I guess, policy drivers in the environment and climate mitigation areas. So my very cheeky question is, what do you think of each other's views?

THE CHAIR: Who would like to start on that question?

MR CAIN: Come on, who wants to go first?

THE CHAIR: Thank you, Peter, for sending us off on that one! Rachael, do you want to have a crack at it, or Jo?

MR CAIN: I am sorry, it is not just a cheeky question; for me it is a very relevant question because I was probably expecting each group like yourselves to have very similar perspectives on something like this and that is not the case. Anyway, EDO first.

Ms Maier: I think fundamentally the position or concerns with the proposed amendments is the same or similar. Both our organisation and the Conservation Council recognise that there is a housing crisis. However, we have come to it from a legislative drafting lens and considered the implications of the proposed law and the words that have been used in that drafting. We have considered what provisions are already available that achieve the same or similar outcomes, rather than considering purely the environmental impacts, which has been the Conservation Council's approach from my review of their submission. I do not think that we come from fundamentally different positions about the amendments in that they do erode community rights which was referenced in the Conservation Council submission, and the Conservation Council did propose carve outs, as was previously mentioned, for environmental issues, whereas we just considered that the bill as a bill itself is not necessary due to that process that is already available.

MR CAIN: Anything to add, Rachael?

Ms Parkes: No. Jo has covered it well.

Dr Copland: I agree that Jo has covered it well. I do not think we have fundamental disagreements here. I think that we probably have approached it from different angles, which is what the value of having different groups working in this space is. I am not a lawyer and I will never pretend to be a lawyer, and I have no desire to do a law degree and that is no offence to anybody that does have one, but it is just not my field, but that

is why it is great to have the EDO here because they can look at it through the legislative drafting approach, whereas we are looking at it through our lens of the best way we can protect our environment.

I would say that what we have done here in our one is looked at what would be a way to pass this legislation that would be amenable to us, I guess. This is not legislation that we have been pushing for. It is not legislation that I am out publicly pushing for. It is not high on our priority list of things that should be achieved, so we are looking at this as a new proposed piece of legislation. If this were to pass, what do we think would be acceptable? Whereas I fully respect the position of the EDO to say well, actually, maybe there are already ways that this can be achieved: what the government is trying to achieve can already be achieved. So I think that actually we are coming at it from—we have kind of the same views—very closely, but we have just answered the question in different kinds of ways, if that makes sense.

MR CAIN: Well, I mean, the view is should the bill pass or should it be amended or something, and obviously it would seem, just from your submissions—unless each of you would like to actually qualify what you have submitted—it would seem that you are approaching it from a different end of the spectrum, a sort of a qualification but from opposite positions. So I do not know if there is any reason for you to modify what you have submitted to the committee or based on what you have heard or read.

Ms Maier: I think if you look at my last three recommendations, they are all proposing amendments to the bill if it is to be passed. I do address the principles of ecologically sustainable development and my concerns about environmental impacts. I have not focused on particular projects that this could be applicable to, as has public conservation groups in their submissions, and I do not intend to. I think that the way I have addressed this in our submission is suitable to show that we are concerned about the impacts on the environment and what may be the implications of this bill if it were to be passed. So I think in the three qualifying recommendations in our submission, were the bill to be passed, we have provided our position and we do have concerns with it as it stands, but our recommendation is that it is not necessary on the basis of the current legislation.

MR CAIN: I understand your point there. Obviously if the bill passes, then you are saying, "Well, let us make sure this happens," but obviously your lead recommendation is that the bill is unnecessary because we already have a declaration pathway to declare projects as territory priority projects. I do understand that you also address the scenario if the bill is passed, and I understand that completely, but I guess each of your starting points are very much different in my opinion.

Ms Maier: I think Simon mentioned earlier he is not a lawyer. This is not necessarily that someone who is not a lawyer would be familiar with new legislation, the implications of section 218 are not necessarily clear to someone that is not familiar with that pathway, and so it does not surprise me that it is not something that has come up in submissions from conservation groups who are not aware of that process and what that would mean in the context of this proposed bill.

Dr Copland: I wish to say pretty much what Jo has said there, that we have addressed the bill as it was presented to us, whereas it is useful I think for the EDO to have gone and looked at what currently stands in these processes, and I can tell you that I am not

an expert in how these processes currently work. So, I think we have just answered the question slightly differently. I do not agree that we are coming at this from fundamentally different approaches.

MR CAIN: Simon, do you agree with the first recommendation of EDO?

Dr Copland: I would have to—because I have had a chance to look at their submission over the past, I do not know, late last week—I will have to have a look at it and be able to come back to you. I cannot answer that question straight away.

THE CHAIR: I might just quickly supplement to Jo and Rachael because guys have been working quite intimately with this. Under legislation at the moment, DAs need a decision-maker. The minister is the decision-maker for territory priority projects and the minister has told us that he would delegate that decision-making to the chief planner. Do you have any views on whether that is an appropriate decision to delegate to somebody else or whether they should be kept with the minister?

Ms Maier: To provide a properly qualified answer, I would need to take that on notice unless Rachael has anything to add.

THE CHAIR: I love people who think carefully about questions. We are at the end of our time. Thank you so much for your time. EDO, Jo and Rachael, you have given us excellent evidence, as have you Simon. You have taken a couple of things on notice. If you have time and you can provide that, please do, but if you are busy saving the environment, doing other things, that will also be okay. So we will leave it to you to talk to our secretariat as to whether there is further information or not. We thank you very much for your time today and we are now wrapping up this session. You will receive an uncorrected transcript that you can have a read over and tell us if that has captured things correctly. Thank you.

Short suspension.

ENGELE, MR SAM, Deputy Director-General, ACT Health Directorate
LOFT, MS CATHERINE, Executive Group Manager, ACT Health Directorate
STEPHEN-SMITH, MS RACHEL, Minister for Health, Minister for Mental Health, Minister for Finance and Minister for the Public Service

THE CHAIR: Welcome, Minister for Health, Ms Rachel Stephen-Smith, and officials. Thank you all for joining us. I trust you have read the privilege statement. I will remind you of the obligations and protections in that. Witnesses must tell the truth. Giving a false or misleading statement will be treated as a serious matter and may be taken as contempt of the Assembly.

We might jump straight into questions, but before you answer your first question, please state that you have read and agree with the privilege statement. Colleagues, I will start with the first question; it is a very simple one. Minister, we have heard a great deal about public housing and this bill. I may have missed it, but I did not see an awful lot about public health and this bill, and in the last hearing on the annual reports, I asked some officials, "Do you need a different system? Have you already declared territory priority projects?", and I did not hear a lot. Can you tell me why we need this bill for public health?

Ms Stephen-Smith: Thank you, Chair. I have read and understood the privilege statement. I think in relation to health facilities, this is a matter of, really, codifying what we would expect to happen anyway. If you look at section 218 of the Planning Act and the criteria that a development would be required to meet to be declared a territory priority project, all of those criteria would pretty much be satisfied for all of the public health facilities that we would be considering developing. So rather than going through an individual TPP declaration process for every single one of them, which is what I would expect we would do to ensure that those facilities can be built in a timely manner to meet the needs of the wider community, it seemed convenient, while this bill was being brought forward, that we say, "Actually, rather than going through each one of these individually every time we come to one, let's just say up-front, health facilities will be automatically subject to being a TPP."

THE CHAIR: Thank you, Minister. There are the existing provisions you already have, which I understand you have not yet used, unless I have missed a declaration of a territory priority project. I do not think you have had a health facility declared yet?

Ms Stephen-Smith: No; that would be a timing issue. The Planning Act is relatively new, and I do not think we have been through a DA process in that context. I think the facilities that have been through DA in the meantime were commenced earlier than that—the Watson precinct and the South Tuggeranong Health Centre; both of those were well into their planning for development application stages.

THE CHAIR: Sure. The provisions we have already got, without amending the bill—the ones that are already in the act at the moment—have quite a number of protections in there, including ministers being satisfied that there has been a degree of public consultation that has already taken place and the planning minister and the Chief Minister jointly making a declaration, and there is a bit of a process there.

Can you explain to me why the process that is already in that act is not sufficient for

anything that you think you need for public health facilities? I am trying to follow it. We have not had any discussion of it in the public domain, and I am not sure why it is that you need to have something new rather than powers you already have.

Ms Stephen-Smith: I think it really is about providing certainty for the community and to say, from an ACT government perspective, that we consider health facilities are important infrastructure developments on the part of the ACT government. I would certainly expect that any health facility would be subject to appropriate and significant community consultation, and that has been the record to date, so I would expect that criterion to continue to be met. So it is really about saying, from the point of view of providing certainty, "The ACT government's view is that the development of public health facilities are territory priority projects."

THE CHAIR: But you could already have that declaration made now under the existing provisions, couldn't you? If you applied for a declaration and the declaration was made, everybody would already have certainty. Have I misread something?

Ms Stephen-Smith: Again, that means going through that process for every one of them. What we are saying is that we would expect to go through that process for each of them, so let's provide certainty up-front and say, "We believe that public health facilities are territory priority projects."

THE CHAIR: Can you tell me how many ACAT appeals there have been on public health facilities in recent years, or perhaps can you tell me how many public health facilities you have got coming up that you would expect to use this process for? I am trying to get a sense of why there are so many that it is not possible for you to use the provisions you already have.

Ms Stephen-Smith: The only one that I can think of, and I do not know if it was an ACAT process, where the planning process caused a significant delay and resulted, in my understanding—it was before my time—in changes in what was able to be delivered was the Ngunnawal Bush Healing Farm. As you may be aware, the planning restrictions around the Ngunnawal Bush Healing Farm mean it cannot be used as a clinical service, which makes absolutely no difference to neighbours, but it restricts the model of care that can be provided on the site. But my understanding—and I was not around at the time—is that that resulted from an extended, lengthy process of trying to get planning changes to enable the Ngunnawal Bush Healing Farm to go ahead.

In terms of the facilities that we have coming up, I would identify the Griffith Inner South Health Centre as one that has the potential to attract one or two people in the community who may be opposed to that development in their suburb. Having doorknocked Griffith multiple times, I am pretty confident that the vast majority of local residents are supportive of that development, but it would only take one or two to potentially hold up a really important community health facility.

THE CHAIR: Absolutely; and is there a reason that you would not be able to declare the Griffith centre under the existing provision that is already in the act?

Ms Stephen-Smith: I am confident that we would be able to declare a TPP under the existing provision. I guess the message we are sending through this bill is that we think

that public health facilities are priority projects for the ACT.

THE CHAIR: Thank you.

MR CAIN: Given everything you have said, it seems like the current arrangements more than capture your concern to make sure health infrastructure developments proceed unopposed, so I am struggling to see why you would see the necessity for extra legislation to do something that you rarely have to do and, in fact, you have never had to do. You may have to do it in one case that is coming, where you already have a mechanism.

Ms Stephen-Smith: I do not think that is an accurate reflection of what I said, Mr Cain. My expectation is that we would be declaring upcoming health facilities as territory priority projects. Now, obviously there is—

MR CAIN: Which you can do now without a bill.

Ms Stephen-Smith: No; I take your comment on that, but your comment seemed to indicate that I think there is only one. Certainly, the new Northside Hospital is one where we have already indicated internally that we would be seeking to have declared a territory priority project, so that is—

MR CAIN: Through the regulation if the bill is not passed?

Ms Stephen-Smith: Sorry?

MR CAIN: Would you do that through the regulation if the bill is not passed?

Ms Stephen-Smith: It would be my expectation that we would use the territory priority projects process.

MR CAIN: So you do not need the bill.

Ms Stephen-Smith: That is one more step of process that we need to go through to develop a facility that is important for the community.

MR CAIN: So you would not need the bill to do that. Surely you can see that

Ms Stephen-Smith: Well, Mr Cain, obviously, there is a mechanism under section 218 of the act that could be used. This bill is about streamlining that and sending a message to the community that public health facilities are priority projects for the ACT Labor government.

MR CAIN: So could you confirm—

Ms Stephen-Smith: They might not be priority projects if the Liberal government were in power; I recognise that.

MR CAIN: Excuse me! You are addressing a committee of this Assembly.

THE CHAIR: Peter, if it is all right, and Minister, we can just take a breath. Fiona has a supplementary question on this line.

MS CARRICK: I was just wondering, Minister, has the Health Directorate or anybody else approached you to go through this process for territory priority projects for the whole lot of the health facilities?

Ms Stephen-Smith: Under the current legislation, Ms Carrick, I think they would be considered on a case-by-case basis as they come up through the process, so as I mentioned earlier, we have already had that conversation in relation to the new Northside Hospital.

MS CARRICK: You mentioned something before, I think—I am not sure if I heard you correctly—about community consultation that would still occur. With a normal DA, there is no more pre-DA consultation, so on what basis would you have to do community consultation if we had territory priority projects? Because you do consultation on the whole lot—on the territory priority project. When the individual DAs come through for the health facilities, my understanding is you do not have to do community consultation on a TPP because it is already done for the whole lot, and under the new planning framework, you do not have to do pre-DA consultation. So where would you be required to do community consultation as the health facilities come through?

Ms Stephen-Smith: Ms Loft might have something to say about how we undertake community consultation for health facilities. I think our record of community consultation and engagement in relation to the development of new health facilities is pretty strong, but Ms Loft can talk about how that process works from a Health Directorate perspective.

Ms Loft: Thanks, Minister. I have read and understood the privilege statement. Community consultation is absolutely crucial to the design process. That is why we do it. It is not something that would ever stop. We need to be able to get down right at the grassroots level to understand what the consumers need so we can feed that into the design process. There is no point building a facility that is not fit for purpose.

That is not going to stop under a TPP. The TPP just gives us a little bit of timesaving if we can get this up-front. It locks in our construction timeframes in the program. It gives us more certainty to be able to achieve those milestones and deliver projects on time without any delays. That is one of the big reasons to be able to have that timesaving up-front, and, like I said, community consultation is absolutely critical and crucial for us to design these facilities.

MS CARRICK: With the timeframes—for example, we know the facility at the Griffith shops is on the books, so when was that announced?

Ms Stephen-Smith: When was the location announced?

MS CARRICK: The Griffith shops—yes.

Ms Stephen-Smith: I believe it was early last year that we confirmed the location for

that.

MS CARRICK: How long will it take before the DA goes in?

Ms Loft: We are still going through the design process, and we need to do some planning amendments there first. What we are working out now is what services could go in, what the design would look like, how big the footprint is and all of those sorts of—

MS CARRICK: If this is about timeframes and certainty, how much would an ACAT appeal—how much time do you add in for the potential of that happening? If it is a good design and 99 per cent of the community are happy, then, potentially, if it is not in breach of the planning laws, normally they go through ACAT. They only get held up if they are in breach—if they are non-compliant.

Ms Stephen-Smith: I am not sure that that is the experience.

Mr Engele: I acknowledge the privilege statement. The challenge with ACAT is that it does take time to go through an ACAT appeal, even if the outcome is a mediation process or the ACAT appeal is not upheld, so it still does add a period of delay. Even in cases where there is no standing, it still takes possibly up to a month just to establish the level of standing. I think that there are definitely timeframe impediments, and it can occur at quite time-critical parts of the process, once contractors have been engaged and there are expectations in relation to timeframes.

MS CARRICK: Do you have any examples of health facilities that have been held up in ACAT?

Mr Engele: The only one that has been held up in ACAT is the Bush Healing Farm.

MS CARRICK: The Bush Healing Farm.

Mr Engele: Yes.

MR CAIN: How long ago was that?

Mr Engele: That was probably—I would have to look back and see.

MR CAIN: A long time ago by the sound of it.

Ms Stephen-Smith: Yes, it was a long time ago.

Mr Engele: 2014.

THE CHAIR: And it was not called-in, and it was not declared a territory priority project.

Ms Stephen-Smith: There was no such thing as a territory priority project, Ms Clay.

MR CAIN: There were call-in powers, though.

Mr Engele: There were call-in powers back then. I guess the—

Ms Stephen-Smith: I am not sure it was not called-in, actually; I cannot recall. I think it may have been called-in and changes made, but I cannot say for sure.

MR CAIN: Are you happy to take that on notice to provide more information?

Mr Engele: Yes, I can find that.

Ms Stephen-Smith: It cannot be called-in once it has gone through the DA process and ACAT, I think, is the answer to that. Sorry, that was my mistake.

MR CAIN: The previous minister has done that. If you could give us some advice on that, that would be appreciated.

MS CARRICK: Under the new planning framework, the outcomes-based planning framework, have any health facilities gone through that process? Presumably this new framework was put in because we get better outcomes from it.

Ms Stephen-Smith: I believe Conder would have gone through under the new planning law.

Mr Engele: Watson as well.

Ms Stephen-Smith: Watson, I think, may have been first submitted under the previous planning act, but I think Conder—the South Tuggeranong Health Centre—has gone through under the current Planning Act.

MS CARRICK: And were there any concerns? Were there any ACAT appeals on that?

Ms Stephen-Smith: No.

MS CARRICK: I am just wondering, with the new planning framework that is supposed to deliver us better outcomes, what the impact of an ACAT appeal would be. The new planning framework is that the government has got to consider the guidelines, so it is not really clear to me that when people go to ACAT that the government will not just say, "We will reconsider the guidelines." And where does it go from there? I do not understand what the point of law is anymore if you go to ACAT—

Ms Stephen-Smith: I would just reiterate what Mr Engele said: when a development application decision is taken to ACAT, it is a time critical part of the project, when you are trying to get the construction underway. Providing certainty around construction timelines is what we are trying to achieve here using the territory priority project process. While, obviously, in the short time that the territory priority project process has been in place we have not used it yet for a health facility, if there were to be an ACAT appeal following a development application process, that would be a delay at a time critical point and, I think as Mr Engele said, that is usually a delay of at least a month just to get that process started.

Mr Engele: I will just add that the other thing with some of these facilities is that there is a flow-on effect. With this constant juggling of services across the network to accommodate new facilities, you could have unintended flow-on effects from one facility and service relocation.

MS CARRICK: What if there was a legitimate non-compliance? Where would be the checks and balances that would pick that up?

Mr Engele: The independent Territory Planning Authority's role is to confirm the compliance—

MS CARRICK: But this is where things slip through the cracks. There are developments that slip through the cracks, and they get found, and the appeal is upheld at ACAT. That does happen. Sometimes things slip through the cracks. So where are the checks and balances to pick up any non-compliance that slips through the cracks, if we do not have appeal rights?

Ms Stephen-Smith: I think that is a question about the appropriateness of the territory priority project concept in total. What we have been saying in relation to health facilities is that my expectation is we would be seeking to declare them territory priority projects anyway, so it is not really a relevant question. Your question is about the appropriateness of the establishment of the territory priority project stream, which was established under the Planning Act.

MS CARRICK: No. My question is: where are the checks and balances? If non-compliant features of a health facility slip through the planning directorate, where are the checks and balances to pick up those non-compliant things? That is what ACAT does; sometimes they uphold the appeal and sometimes they do not. It can go either way. If one slips through in a health facility, where are the checks and balances if there is no appeal process?

Ms Stephen-Smith: I understand what you are saying, but that would be the case were a health facility declared a territory priority project under the existing section 218 of the act or under this new bill.

MS CARRICK: I agree.

Ms Stephen-Smith: So that is a different point.

MS CARRICK: Why do you have to declare it then? Is it just to avoid having an appeal process? Why can't it just go through the normal processes?

Ms Stephen-Smith: That is a question about why we established the territory priority project process under the Planning Act in the first place. That whole process was debated at great length in the previous term of the Assembly, and the Assembly determined that the Planning Act 2023 would establish the territory priority project process in order to provide certainty for priority projects to not be held up in lengthy ACAT appeals. That was a process that the Assembly, as a majority, voted should be included in the Planning Act. It is about avoiding those potential lengthy delays at a critical point in the project, and often, and particularly it would be the case with health

facilities, after a lengthy community engagement and consultation process, and a design process.

In terms of design for health facilities, there are Australasian Health Facility Guidelines that we also look to, so it is not only about checks and balances with the Planning Authority. We also have our own checks and balances in relation to the design of health facilities that they need to meet in order for us to be compliant with our accreditation requirements et cetera.

THE CHAIR: Thank you so much. I am sorry to jump in, but we have less than 10 minutes left, and I have two committee members who have not yet asked a question. Caitlin is going to ask a question, and we are going to have really brief answers; I am so sorry.

MS TOUGH: I am also interested in consultation. In particular, you have mentioned the South Tuggeranong Health Centre, and as a resident of Conder, it is something I am quite interested in. Can you provide further detail on that process with the South Tuggeranong Health Centre and the other health centres that are under development?

Ms Loft: That community engagement was quite some time ago. I would have to go back, but we could certainly provide all the numbers for YourSay and the summary of the communities and how we addressed that. The process is the same for all three. We go out publicly and publish those; there is a report that goes to the minister, and it is available publicly, so we can get you that for Conder.

MS TOUGH: And on that—anything on the Canberra Hospital expansion project and how you worked with the local community to deliver the new critical services building as well.

Ms Stephen-Smith: There were multiple community engagement avenues, but the two main things, in terms of non-clinician, were a consumer reference group and a local community reference group. We established the local community reference group so that those people from surrounding residences and the Garran Primary School could have a formal mechanism to engage in consultation about design as it progressed. We had a consumer reference group, as well, to make sure that the design reflected a consumer and family friendly, caring environment. Some of those changes that were made for the critical services building are now reflected in the Australasian Health Facility Guidelines because they were recognised with such positive feedback.

MS TOUGH: Wonderful. Thank you.

MR CAIN: Minister, you have listed some examples of things that would obviously fall under the definition of "health facility". What other things would fall under that definition that may not be a hospital or medical centre?

Ms Stephen-Smith: I think the bill specifically lists what would be considered to be a—

MR CAIN: What kinds of projects actually would be built, or maybe even exist today, that would fall under that definition?

Ms Stephen-Smith: I think we have a pretty clear understanding of what is a health facility in—

MR CAIN: I guess that is my question. What is a health facility? Does it include a residential premises that may be used for some health purpose? How broad is this definition?

Ms Stephen-Smith: The bill does specifically include residential care accommodation that provides accommodation for a health, hospital or mental health facility, as well as supporting supportive housing that supports accommodation for one of those facilities and infrastructure required for the effective use or operation of one of those facilities—so access roads, et cetera.

MR CAIN: What examples do we have of that at the moment?

Ms Stephen-Smith: A health facility is defined in the bill!

MR CAIN: Yes, I know, but what actually—

Ms Stephen-Smith: It means, "A facility for providing healthcare services, including diagnosis, preventative care or counselling, or medical or surgical treatment to out-patients only."

MR CAIN: Let's say of all of the things that are out there in our community now that would fall under that definition—I, and I hope the committee, would be interested in what are the current examples of what would fall within that definition of a health facility. You might want to take that on notice, of course.

Ms Stephen-Smith: The eating disorder residential facility that was recently established in Coombs is an example of something that would be considered a health facility under this—

MR CAIN: Sure. I guess I am curious as to what existing facilities are there in our community now that would fall under that current definition. And I am very interested in place and name and function. I think this committee might be interested in such a list.

Ms Stephen-Smith: Okay; I think we can probably provide you a list of all of the centres and Health Directorate—

MR CAIN: Thank you. It was a simple question and is easily answered, I hope. Hopefully, it is easily answered.

Ms Stephen-Smith: Yep.

MR CAIN: And, secondly then, supplementary to that, given what you have an understanding of because you administer these things as health minister, is there anything you have planned that would be additional and different to the type of health facility that is out there at the moment that this bill would capture?

Ms Stephen-Smith: I do not think so. We currently have a wide range of health facilities for community based and outpatient services and residential services across mental health, alcohol and drugs, and broader maternal and child health, for example. I am struggling to think of something that we do not have any examples of at this point.

MR CAIN: Sure. My point is that most people would think, "oh, yeah, a hospital; sure, that should go ahead," but obviously it is much more than just that. And I think it would certainly inform the committee report to look at what this is actually addressing, noting that I think the members have made the point pretty strongly that if there are any concerns about appealing these developments, there is a regime at the moment that would allow the health minister to do so that has actually never had to be used anyway.

Ms Stephen-Smith: Well, I think Mr Cain—

MR CAIN: It begs the question that I asked earlier: why do you even need this legislative change for health? But, anyway, I will throw back to the chair.

THE CHAIR: Thank you, Mr Cain. I am just going to check-in with our secretariat right now and check what questions we have had taken on notice—the 2014 facility and whether or not it was called-in, and can you just tell us the planning story with that particular facility? The types of facilities question from Mr Cain. And we think there was another one in the middle. I seem to recall it was about whether there has been any TPPs or call-ins on health facilities, but we will check the record and go back to it. Did anyone have any other questions?

Ms Stephen-Smith: Well, there certainly have not been any TPPs.

MS TOUGH: And the South Tuggeranong Health Centre consultation.

THE CHAIR: The South Tuggeranong consultation—thank you.

MS CARRICK: Would it include Arcadia House being built at Burrangiri?

Ms Stephen-Smith: Were that to occur, I think that would depend on whether it even was a development application process. A refurbishment that only triggered a building approval might not trigger this process anyway, but I think we are probably getting a bit ahead of ourselves in contemplating that at this point. We are still waiting for some feasibility work around whether or not that would even be a possibility.

THE CHAIR: All right; thank you, team. Thank you very much for your evidence today. If we can get the answers back within five days of you receiving the *Hansard* proof transcript, that would be excellent. That brings us to the end of our hearing.

Ms Stephen-Smith: Thank you.

Short suspension.

MARTIN, MR ERIC, Member, ACT National Trust Council and Heritage Committee

THE CHAIR: Welcome, Eric, and thank you for your patience. I am just going to quickly check in on the privilege obligations in here. Witnesses are required to tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Of course, if we ask you something and you do not know or you have an opinion, you can just say, "In my view" or "I am not sure about that". All of that is absolutely fine. Can you please state whether you agree to and you understand the privilege statement?

Mr Martin: I acknowledge and accept the privilege responsibilities and obligations.

THE CHAIR: Thank you so much. We have a fairly short session today. I want to start with something general. To your knowledge, have there been many appeals that have gone to ACAT about public housing or public health facilities that raised heritage issues?

Mr Martin: There have certainly been some public housing that have gone to ACAT in respect to conservation areas and redevelopment in conservation areas. The real issue here is that it is unclear—within my understanding of the proposed legislative change—what will be the protection of heritage places. Despite what may have happened in the past, the issue, whether it be a house within a conservation area, a heritage listed house or a heritage listed health facility, is that it is unclear what the process will be in respect to recognising and appropriately dealing with the heritage significance of the place in the process of what this act permits.

THE CHAIR: It is a really good point that you raise. I have read the bill and the ES, just as you have, and I cannot see anything in particular that would require that. Are you suggesting that maybe there is a need for consultation, or is there some process in mind that you have to make sure that heritage implications are understood before a decision gets made?

Mr Martin: It needs to make sure that, whatever the proposal is, it will have what we refer to as the minimum impact on the significance of the building and/or the minimum impact on the significance of a conservation area. Somehow that needs to be embedded into the proposed amendment, so that heritage assets of Canberra are not destroyed in the process that this potentially permits.

THE CHAIR: I like the commonsense interpretation of "minimum impact". Is that a term that you can expand on for us?

Mr Martin: With every building or anything of heritage value, there is a statement of significance and there are sometimes particular guidelines in respect to how to protect that significance. Most of the conservation areas have a particular series of guidelines which basically assist the Heritage Council in determining whether a place is consistent with protecting the heritage values or not. There are some that ae mandatory and there are some that are discretionary. Obviously, the mandatory ones need to be met in respect to meeting the obligations, and there is some discretion with some items. That really comes back to the experience and expertise of the Heritage Council and their view and the proponent's view in respect to whether that change will have a significant impact

and, therefore, not be permitted or will have a minimum impact and could be permitted.

THE CHAIR: If the bill before us is passed, do you think that that information and that knowledge would be conveyed to the planning decision-makers who would be running these developments?

Mr Martin: I do not know, and that is the problem. There is nothing that we can find clearly articulated about how those heritage values can be or will be protected.

THE CHAIR: Thank you.

MS CARRICK: So there is nothing even in the guidelines?

Mr Martin: In the guidelines associated with this particular amendment?

MS CARRICK: No; in the guidelines in the Territory Plan?

Mr Martin: The guidelines in the territory plan refer back to the Heritage Council's listing and seeking advice from the Heritage Council on the significance of the place at the time that the DA is normally processed. I understand that this will circumvent that process and we have no idea whether the Heritage Council will have any input to the whole process.

MS CARRICK: This law circumvents third-party appeals.

Mr Martin: Yes.

MS CARRICK: And if it is holistic, then you do not have consultation for each individual public housing DA. But, assumingly, when they do their DA, they have to address the guidelines in the Territory Plan and then go back to you. It is whether they pick it up properly and what slips through the cracks and then no appeal rights.

Mr Martin: That is right, and that uncertainty and lack of clarity is what is of concern to the National Trust. I am not quite sure how you fix the problem.

THE CHAIR: You are doing a very good job of describing the problem, though, which is half the battle.

MS CARRICK: That is exactly right.

MS TOUGH: Given that public housing and health facilities under the current planning laws can already be individually declared territory priority projects, would the same concerns you have got already apply to the existing laws? We just heard from the health minister that she would like the health project side declared territory priority projects anyway. I think you already have that existing planning framework.

Mr Martin: We are equally concerned about some health projects. There are health facilities which are heritage listed. There are health facilities which are in poor condition. The Phillip Health Centre is one which seriously needs upgrading. But if the decision was that we demolish it, a part of our heritage—and it is heritage listed—would

be lost and there would be no opportunity to comment. That is our concern.

MS TOUGH: So it is not necessarily the bill itself but if a project is a territory priority project and losing that third-party appeal on the heritage?

Mr Martin: We do not have a problem with the bill in principle, provided there is some mechanism, either written into an amendment to the bill or process—which has certainly not been made clear to date—stating that heritage issues will be adequately considered. If the Heritage Council's advice is sought and that advice is then provided, the trust would be happy enough to support the Heritage Council's decision. But, at the moment, we have no idea whether we are consulted or involved or have an opportunity for advice. Unfortunately, with the resources available to the Heritage Council and the heritage unit, they are very slow at the moment, and that is not going to speed up the process that this act or amendment bill is trying to achieve.

MR CAIN: I guess I am inviting your comment. Obviously, you have just heard that there is already an existing TPP process but that is via regulation. It is a step that is taken that is obviously very visible and public. If the bill passes, there would be no step; there would be an automatic allocation of that status without any transparency necessarily except on just one of those. Does that give you some concerns at all?

Mr Martin: It does give us concern. Obviously, it is restricted to the heritage places, but it certainly does give us concern that some of our heritage assets could be lost without us being aware of it and there being no opportunity to comment and no opportunity to have a decision potentially reviewed in the process.

MR CAIN: Whereas, at least under the existing process, it would appear that there has to be some transparency to a particular thing being listed and regulated by at least two executive members. At least that is something that is visible.

Mr Martin: Yes. The DA process is a very visible process. There is obviously a clearly defined reporting process, with the reasons and rationale behind certain decisions. That opportunity will not exist.

MR CAIN: From the point of view of the National Trust, would you be happier if the bill did not pass, or are you ambivalent? If it is passed, what protections would you like within it?

Mr Martin: I think a better solution would be to not pass the amendment but get the process working far more efficiently and effectively—and that process is both the DA process in the Planning Authority and the Heritage Council's decision-making process. I believe that the time taken for that process is far too long—and therein lies the problem. I do not think the process that we have at the moment is a problem except for the response times. They are not meeting their statutory obligation, and Heritage are very slow in responding.

MR CAIN: Given this inquiry is actually about the bill, and noting your comments on very significant and related matters, is it the view of the National Trust that the bill should not pass?

Mr Martin: It should not pass in its current form. But, if the issue in respect to protecting the heritage is somehow embedded into it, we would be happy to accept it.

MR CAIN: Thank you.

THE CHAIR: I might circle back and please forgive me if I am restating things. We have sort of got three ways through at the moment. There is the regular processes where you lodge a DA and it goes through the regular planning system and the ACAT appeals apply except in certain places, like town centres and certain situations. That is the normal process. We already have this system in the new act for declaring a territory priority project. We have not seen any of those come through yet, so we actually cannot tell you what it looks like because it has not happened.

In that system two ministers have to make a declaration, and they have to make sure that there has been sufficient consultation. I actually do not know what sufficient consultation looks like because we have not seen it yet. I do not know if that is a place where things might come up from Heritage. Then, after the declaration, it can be disallowed in the Assembly. So that is sort of a second check. If that whole process has gone horribly wrong, there is a chance, with 25 members of parliament, to decide it has gone horribly wrong.

What we are looking at now is another amendment to get rid of all of the protections in this one. Does the National Trust have much of a view on whether the current territory priority project declaration system, with that consultation and disallowance, would be a better way or whether that process—

Mr Martin: It is another way that could be used. There are, as you have outlined, checks and balances in that process to at least have some consultation or public input in respect to raising the heritage issues to inform or better inform the Assembly in their process of decision-making. At least there is an opportunity to have these issues aired and understood, and hopefully then the decision-makers can make an informed decision.

THE CHAIR: Thank you. You have been extremely informative and concise, Eric.

Mr Martin: Not a problem.

THE CHAIR: We have already spoken about the real-life cases of heritage on public housing, and it does not sound like there were a huge amount of issues. You mentioned there were a few appeals, but we are not really sure—

Mr Martin: There is not a huge number, but the lack of clarity is our concern. You just do not know what will happen if that is the case.

MS CARRICK: Have you had any public housing heritage issues drag on at ACAT?

Mr Martin: The ACAT process is reasonably efficient. It costs a few tens of thousands of dollars and some four to six months for the process. I am not aware that any have dragged on beyond that, unless someone really wants to force it into the Supreme Court process. They are reasonably efficient and do try to, through conciliation, make a

decision quicker and earlier. But that is not always agreeable to both parties.

THE CHAIR: Eric, thank you so much for your time. That was extremely helpful and very precisely conveyed. Thank you very much.

MR CAIN: And thank Gary too. He put his name on the bit of paper.

Mr Martin: Thank you.

THE CHAIR: We will send through a proof of the *Hansard*, and let us know if there is anything that you need to correct in that. Thank you for your time.

Mr Martin: No problem, thank you.

Short Suspension.

JAYATILAKA, MS JODIE, Secretary, Community for Constitutional Reform at Brindabella Christian College, Reform BCC

THE CHAIR: We now welcome Ms Jodie Jayatilaka, from Reform BCC. Jodie, I am just going to run through the privilege statement and the rights and obligations under that. Witnesses must tell the truth. Giving false or misleading evidence is a serious matter and may be treated as contempt of the Assembly. Of course, if something is outside your knowledge, you can say you do not know or, if you say, "It is my opinion," that is completely fine. You are community witness here, so you are welcome to make statements like that. Can you state whether you understand and agree with the privilege statement that you have received?

Ms Jayatilaka: Yes; I understand my obligations here today.

THE CHAIR: Thank you so much. Jodie, you have given us a lot of written material. I was actually on this committee in the last term of the Assembly, and I have seen a little bit on this matter in the last few years already. Would you like to run through why you think there needs to be checks and balances in the particular case you have been involved in and where some of those have gone wrong?

Ms Jayatilaka: As we have said in our submissions, we are taking the position of opposing the bill. Speaking purely to the ACAT, this bill will result in the loss of appeal will end review rights. Also, the Brindabella Christian College is a public institution. So we are talking about public housing and a public health facility on public land.

Our experience has been that the ACAT review process was very important and significant. Without the ACAT review process, we believe that we would still have children in unapproved buildings and we would still have a car park and facilities that were potentially unsafe. We exhausted other processes first, through the controlled activity order application process. Through that process, it was assessed but we say that it was not investigated appropriately or sufficiently. That then allowed us the trigger to then take the pathway of the administrative review process. That pathway then resulted in the decision being set aside and a finding that the campus had been over-occupied and unchecked. The LCA process found that there had been wilful and deliberate breaches of the Planning Act.

In both cases, in both pathways, we use the controlled activity order to raise the issue with the planning department. In both cases, the proprietor's compliance with the laws was not assessed or investigated thoroughly enough. So two community groups ended up in the ACAT review process holding the ACT government accountable and the school accountable, ultimately. So we say that that is a really essential accountability mechanism and we would be concerned about that being removed or those rights being lost.

THE CHAIR: I have been out there and had a little look around and seen it from time to time. It was an unimproved car park, and part of the concern there was that children walking and riding to the Lyneham school were not able to do so safely because there was this unapproved car park.

Ms Jayatilaka: There are two elements to the car park—the vehicle access and the

driveway access. There is a vehicle access code, and that driveway access and verge were built in breach of that code. That is what the ACAT found. Then you have the car park itself. So there is a zoning issue there. The zoning was not for car park use for the school, and there was no development application ever lodged to use it as a car park. Even though the school was granted a lease, I understand that ACAT determined that the use of a car park for the school's purposes was inconsistent with the zoning, and therefore the lease was inappropriately given as well. So the car park was sealed without development approval and used without development approval, and a change of zoning is required.

THE CHAIR: What is the status of it now?

Ms Jayatilaka: It is currently under appeal in the Supreme Court. My understanding of the appeal is that it relates not to the decision that it was requiring rezoning and approval but that it relates to the nature of the orders that were given. They are currently under review. That has been delayed until November because of the administrator appointed, which is another—

THE CHAIR: Yes; there is a lot happening on that campus at the moment.

Ms Jayatilaka: There is.

THE CHAIR: We have to be very careful not to talk about some of the other things that are happening on that campus. The bill we have before us obviously is about public housing and public health facilities, not education facilities.

Ms Jayatilaka: Correct.

THE CHAIR: But I think this is a really interesting case study, because education facilities have also had third-party appeal rights waived in the past. So what we are seeing is some of the difficulty for community organisations to make sure that basic things get built the right way.

Ms Jayatilaka: I think it is also important to recognise that both the Lyneham Community Association and Reform BCC—both incorporated associations with community members—both arose and came to exist out of concern for noncompliance with government legislation. The communities gather together and formed the associations. That is no easy task: you need a constitution and you have to formalise and get advice. Both communities felt that this was so serious that we formed associations to give legitimacy and weight to our concerns. Again, it is only through the administrative review process, the third-party rights and ACAT, that, in both our cases, the government and, ultimately, the school were held accountable. Without that process, we would still have a car park, verge-crossing pedestrians and over-occupation of the campus, which has huge traffic implications.

The second order is insurance issues. If you have an illegal use of a car park and children in unapproved buildings, who carries the insurance risk? It is a public school on public land. So there is a lot of exposure here, and it should not be up to community members to have to bring those things to light. They were not brought to light through the controlled activity process. But we feel that there is an attitude or a posture of the ACT

government where, if individuals or community groups, bring these concerns and complaints, they are viewed as trivial or frivolous—just nuisances. They were not given the time and attention they ought to have had and they were not thoroughly investigated. It was literally handed on a platter to the Territory Planning Authority. It was not looked at until it got to ACAT, and then we needed a legal process, and that was ultimately what resolved that. The controlled activities orders original decisions were set aside and reissued by ACAT.

THE CHAIR: We have had a number of people voice a concern or a lack of trust in government processes, if there is not some kind of community access to enforcement or appeals. We have also had a lot of people express a bit of frustration. I will leave Health to one side, because that seems to be in a different situation, but a lot of people would like public housing to be built more quickly and a lot of people seem to think that maybe the current ACAT process is not the best way to have reviews, appeals or consultation. I am not really quite sure what it is that people are getting from that, but we have had a lot of different suggestions.

Because you have now been through this process, do you have any views on whether ACAT, as it is currently structured regarding appeal rights, is currently the right place, or whether there should be planning panels or whether we should have front-loader consultation conducted a bit better? Is there is there a change to be made, and this is not quite there yet?

Ms Jayatilaka: The ACAT process itself has a 120-day limit on it. I think that is reasonable, and that was very helpful. That was constantly in the forefront of our experience, and the tribunal and the parties were articulating that we have a timeframe. I think the process leading up to that was far too long. I have conferred with my committee and with the LCA, and the processes in the first place of monitoring and enforcing compliance with the act is where there seems to be a problem.

It took us 18 months from when we initially raised our concerns with the Planning Authority to when ACAT made a final decision. That was an 18-month process. When you have a safety issue, that is quite concerning. For the Lyneham Community Association, it was over a decade. It took them over a decade. How is that possible? Something is broken in the process. Once it hits ACAT, 120 days is reasonable. But we need a legal remedy. That is what we are saying. Without a legal pathway or a legal remedy, mediation—someone threw in mediation as an option—will not do anything. It is just a waste of everyone's time.

THE CHAIR: Thank you. I am going to hand over to Fiona for a question.

MS CARRICK: My experience is that, once it is built—and the car park is built—it is very difficult, because nobody wants to do anything. It is already built. What happened in the end?

Ms Jayatilaka: In the end, the orders from ACAT were to close the car park until a development application was sought and approved, which also required rezoning. So that was going to be quite a lengthy process and, as you could imagine, that has a massive impact on the school community and on the Lyneham community. That is currently under appeal. The origin of this came from the Rudd Building the Education

Revolution, which in the first place did away with the development approval process. That is how they started using that land as a car park in the first place, because they built on their own car park, which was on the school campus. So it originated when the DA process was done away with by the Rudd government, which allowed them to build an early learning centre on their car park, and they simply moved across to the land next door.

Our understanding is that planning laws are there to protect everyone's interests. What we have is an over-occupation on the school campus that has been unchecked and unregulated. That has caused the car park issue and issues with pedestrians, traffic, services, utilities, toilets, fire safety, fire evacuation. All of the flow-on from the DA and BA processes are impacted because of that unchecked intensification of the campus. The car park is one element of a breach across the planning and building. Why wasn't it picked up? That is where the root is, I think—better monitoring and compliance.

MS TOUGH: Sorry, but I am not quite familiar with the history of BCC. So please correct me if I am getting things wrong.

Ms Jayatilaka: Sure.

MS TOUGH: So they built a car park that was not meant to be built?

Ms Jayatilaka: Correct.

MS TOUGH: And then you have been able to go to ACAT to say, "This has been built. It should not have been built, as it did not comply." Given there was no DA though or they have ignored the DA—

Ms Jayatilaka: There was no DA for the car park.

MS TOUGH: With this bill, something is announced to happen and people would know that it is coming. Whereas, it sounds like BCC just kind of went, "Oh, look, we have put in a car park," and your concerns are about having those appeal processes. If there was something in the bill that allowed appeal processes on quite restricted terms where, if something like BCC happened, there would still be appeal rights, would that be something that would be more palatable?

Ms Jayatilaka: There are two arms to that. In the case of the car park, no DA was ever given but, in the case of the campus, a DA was given and conditioned. The conditions very specifically limited the intensification of the campus. That was done in consultation with TCCS, with the education department, Icon et cetera. So the conditional approval was given to protect the community, to protect safety, to protect the infrastructure of the ACT government—waterways, sewerage et cetera. Those were ignored; they were breached. So you have the two examples of both.

If the ACT government is not effective—and what we are seeing here is a loss of confidence in the ACT government and its compliance, monitoring, and enforcement—without an ACAT review, appeal, or review process, where would we be? This is a public institution. They have a duty to the public. They have a duty to protect those

children at the school. I am an ex-parent, and I know the staff there. When you walk into a school, you expect—as you would when you enter a hospital or are living in public housing—that it is all compliant. You would just expect that; you do not even ask the question. Yet here we are with a legacy of breaches.

MS TOUGH: So it is ensuring that, if there is a breach, there is some way to say, "There is a breach here. What can we do about it?"

Ms Jayatilaka: Yes. I think it needs to be legal; otherwise, everyone is just spinning their wheels—there is no mechanism to enforce.

MS TOUGH: So, if there is a breach, they need to do something to be able to do something about that breach?

Ms Jayatilaka: Yes.

MS CARRICK: You raise an interesting issue about contracts with other public facilities. I have seen it before where nobody enforces the contract and there is no compliance—so where do you end up? I should have thought about it and gone to ACAT, too.

Ms Jayatilaka: We witnessed the Lyneham community going through that process. That was when we became aware that there were bigger problems going on here. Public institutions are very public. The ACT government should be setting the example of what compliance looks like. They should not need to be enforcing, because they should be setting the example to private developers and private entities.

MS CARRICK: The problem is that, once things slip a bit, it is hard to sort of bring back those standards.

Ms Jayatilaka: Yes. And now nobody wants to close the school to get all this fixed. No-one wants that, but it is quite the mess.

THE CHAIR: I might just test you a little bit on some of the delays you mentioned before ACAT. At the start of the process, you mentioned that the Lyneham Community Association has been involved in this for a decade, and that, from your point of view, it was 18 months from when the problems were first flagged to when it got to ACAT. Did people try contacting the Planning Authority or the planning minister? How did people report these apparent noncompliant matters?

Ms Jayatilaka: In both our cases, it started the FOI process. One of the first things you hit there in the case of a school is commercial in confidence. So there is a lot of information that is not freely available because of commercial in confidence, There are reasons for that—which is fair enough. That FOI process takes probably three months or longer and then there is the process of making a complaint or putting a concern through Access Canberra. That took a long time from when we lodged the complaint to when they actually went to the campus, collected the documents, made inquiries and then made a finding.

In the case of the LCA—I had a conversation with them this morning—they explained

to me that, initially, they were constantly shut down. When they were making inquiries, they could not see documents. They were trying to understand the nature of the lease, and they were told they could not have it but they could come in and inspect it. When they went in and inspected the lease, they were told they could not take a copy and could not remove it. It is just this lack of transparency and hurdles and obstructions—and these are community people directly impacted by these planning decisions.

THE CHAIR: When people contacted Access Canberra, they obviously got unsatisfactory responses, but did they get responses?

Ms Jayatilaka: Again, I will speak in our case. We contacted Access Canberra and we made a controlled activity order application. We spent a great deal of time and effort to provide all of the evidence, all of the substantive information, to make that as an efficient process as possible and not waste everybody's time. Literally, in very layman's terms, the authority went to Brindabella and said, "Are you breaching DA conditions? Are you breaching these laws?" And Brindabella said, "No; we are not breaching them." And they said, "Okay; all right." They then wrote back to us and said, "Our decision is that there is nothing more to be done."

We then put exactly the same evidence before ACAT, and ACAT ruled that there was over-intensification of the campus, unapproved classrooms and unapproved buildings, which were subsequently removed from the campus. So something broke in the process there. Again, we wonder whether it is that posture of "It is a community group," and it was not taken seriously. That is how we put it. It just was not taken seriously.

THE CHAIR: It is a really good illustration of something that went to ACAT that maybe would not have gone to ACAT if it had been dealt with earlier in the process.

Ms Jayatilaka: Yes; and think of the public resources involved in that process. I know the Lyneham community have pro bono legal assistance. We represented ourselves, and we probably spent $7,000 to $8,000 on advice, expert opinions and ACAT. As a community group, we had to raise that. That is from people's personal pockets. They have donated that, and I know the school spent exorbitant amounts of legal fees to defend it. When people enter an ACAT process, they make quite a commitment to do that. We are not lawyers and neither is the LCA. It is not an easy process, but it is important. It is a legal remedy.

THE CHAIR: Yes; absolutely. Thank you so much for coming in so well-prepared and for explaining a really complicated matter in the quickest timeframe I have ever seen in the whole of the committee. That was great.

Ms Jayatilaka: No problem. I have provided a supplementary—just a dot-point list—to the committee to assist.

THE CHAIR: That is great. We have it. Thank you.

Ms Jayatilaka: So thank you for hearing us.

THE CHAIR: Yes. Thank you.

Short suspension.

ANDERSON, MR TOM, Private citizen
HAMILTON, MR ANDREW, Private citizen
HUBBARD, MR IAN, Private citizen

THE CHAIR: Welcome. I will run through the privilege statement. Witnesses are required to tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. If we ask you something that you do not know, it is okay, particularly for our community witnesses, to say, "I do not know" or "That is outside of my experience." You are also welcome to say, "in my opinion". All of that information and evidence is really useful for us as a parliamentary committee. I will get each of you to state whether you are here as an individual representing yourself or if you are here representing an organisation and say who that is. Could you also confirm that you have read and you agree with the privilege statement?

Mr Hamilton: I am part of the Holder community. We are a band of residents who came together for one of the public housing proposals in Holder, and we still do a lot of work together. I am aware of the privilege statement and I agree to it.

Mr Hubbard: I am also representing myself on this occasion but, just for full transparency, I am also associated with the Ainslie Residents Association and the North Canberra Community Council. I am aware of the privilege statement and agree with it.

THE CHAIR: Thank you. We will start with our first question from Fiona.

MS CARRICK: We have been talking about consultation and timeframes—and, no doubt we will get to that—but I just wanted to ask if you had had experience with ACAT and what checks and balances you would have had without the opportunity to go to ACAT.

Mr Anderson: I will start by going to back to an ACAT case that involved the old AFP site in which Planning Authority took the development application to ACAT and the Weston Creek Community Council joined it as a third party. That hearing lasted something like 14 or 15 days and was resolved some three months later when ACAT made a decision to disallow, or agree with, the Planning Authority's proposal—that they were not to cut down all the trees and had to come up with another one. It was long and it was laborious. It was run by two lawyers—one on either side. I would not want anyone to go through that. That is a snapshot.

MS CARRICK: Thank you.

Mr Hamilton: I can share my experience of not wanting to go through ACAT but that was where we ended up at the end of it. There was a fairly good consultation process after the initial meltdown. I guess that is the only way to describe the way that Holder and Chapman and a few others were presented to the community. There was a fairly big backlash. We got off on the wrong foot, essentially. It was a train wreck from the start. The community consultation was very intimidating and threatening by whoever they got to do that. That put the community at odds with the government straightaway and got a few people's backs up. As time progressed, the task force changed their tune. There were a few key changes made at the top of the task force, and all of a sudden

there was a far better approach to consultation between the community and the task force on the design and the layout. That was actually really good.

In my submission, I present to you some of the principles that were agreed. It was facilitated ad hoc; it was not facilitated by an independent or professional facilitator. It should be noted that the community had a bunch of different views, all collected together, and there was a fairly well-oiled government machine that was there to do its bit. We got a good outcome, but there were still a few issues. It got to the point where they just decided they were going to move forward with the DA. There were still a few issues that were important to me and to the other community members. So we put in the DA. That is when we worked out what it would look like.

ACAT is, as everyone says, a long-winded process. Mediation behind closed doors was exceptionally threatening and intimidating. There was no behavioural standard employed by a particular public servant, who seemed to be a ringleader. That affected the way the rest of the professionals acted—or they seemed to be stymied. We were basically in a hostage situation and we had to go through to the full hearing, not because we wanted to but because they did not want to mediate or resolve the issues that we thought were important.

When we got to ACAT, there were no lawyers on our side. There were three community members wanting to have a conversation but also wanting to protect everything that we had worked for during the actual task force consultation and not lose any of that. That is what we were there for—because of the behaviour in mediation. They had eight lawyers at one stage up against us. Goodness knows how much it was costing them.

All the time delays that they all talk about, they were pushed by them. Remember, we were also taking time off work, away from our families, holidays and all sorts of things that we wanted to do, because of their behaviour—always their behaviour. It took a long time. At the same time as we were doing this job, if you work for particular employers in this particular city, you are not always in this city; you are somewhere else doing something else. That is what we were up against. It was long-winded because they kind of manoeuvred us into a point where we did not see any way other than going through ACAT to protect what we had got during consultation. I would not do it that way. I did not want to do it that way. I think you have heard from a number of people that there are better and less expensive ways to do it than that way.

Mr Anderson: I would add that it was not only Holder; it was also Chapman and Wright. The three proposals came forward out of the blue and the community was angry. There was a meeting over at the Weston Creek Community Council that we had to cancel it because we had almost 300 people coming along to attend. The minister rang me, when the next meeting was, at about 5 o'clock in the afternoon and asked if she could come along and address the meeting. There was a lot of anger in the community about the way that public housing went about it. There was no consultation. Even when we got to consultation, we had three groups going into the city on Northbourne Avenue to meet and try to get some agreement. It was not a good process and it did not reflect well on the bureaucracy.

Mr Hubbard: I basically agree with what the two gentlemen have said so far, but I think there are two parts to that question which I think are important: one, that early

consultation is really important to get a sensible outcome when you have basically a proponent or developer who is building the development and then you have got neighbours and community who are being impacted by that.

I have been to a number of ACAT hearings. They have been really different, depending on who the members of that particular ACAT meeting were and also whether the proponent of the development was prepared to get engaged with the community and review and make changes to their proposal. Some developers of some of the developments that I went to ACAT about were not prepared to change their development in any way whatsoever and were really happy to not participate in the mediation, which is usually a pretty good process, prior to actually going to the hearings. I think that should be used as an example of a better process that can take place.

With one that went to ACAT, we went to mediation and the architect of the development sort of shepherded me aside as we went into where ACAT was at that stage and said to me, "I don't know why you are bothering to go here because you are going to lose anyway." As a community member who really had not engaged in ACAT before, I felt that that was pretty intimidating and I said, "The community members that are there are pretty fired up about what you are doing, and we are going to go forward." Then we did the mediation and proposed some changes which were pretty reasonable. They were sort of halfway between what they were planning to do density-wise and what they were proposing. They said to the person who was running the mediation, "We are not interested; we will see you in ACAT."

When we got to ACAT, there were three community members, including a person who was living in public housing at the time who was impacted by the development, although this was not a public housing case. So there were three of us and then there were three lawyers from the proponent, there was the government solicitor and then there were seven experts of various kinds who were related to planning, architecture, engineering, landscaping et cetera. It was very clear that, unless we really matched the team of experts on the other side, we were just going to get absolutely belted up in ACAT because of the legalistic way that they were approaching things.

Also, really importantly, ACAT, because it is quasi-legal, a couple of the members really appreciated that there was an imbalance in power between the parties who were at ACAT, and I thought that was a really good thing. So, when community members did not quite know what to do, on occasions, the members of ACAT would step in and say, "What you have to do is focus on this or get some evidence about this." They were pretty good at grilling the proponents about whether they actually complied with mandatory rules and criteria.

All the discussion in ACAT was about mandatory rules and criteria. So they quite often relied on some pretty specific things like setback heights, plot ratios and all those sort of things. So, if you did not have all your ducks lined up in that way, they were not interested in anything else—like whether it was an inappropriate use of community facility land, whether it overshadowed next door neighbours, whether the proposal was financially viable or whatever. The members of ACAT did not really believe that they had considered any other issues other than mandatory criteria.

I think the problem with ACAT going forward is that it will become more adversarial. The problem is that a lot of the rules and criteria have been stripped out of the Planning Act and become non-mandatory, and I think there is a risk that a lot of community members will go to ACAT but have no grounds whatsoever to question the development. That is really fundamental.

There should be some emphasis on developers and proponents to actually engage in legitimate discussions about a development and how any issues or any negative impacts from the developer can be resolved. I sincerely believe that, in a lot of cases, buildings can be adjusted or moved et cetera to accommodate whatever negative impacts they have on, for example, neighbours, parking, overshadowing, privacy and things like that. There are solutions there, but it is whether both parties are prepared to negotiate.

The other thing I wanted to say specifically about this bill is that Housing ACT at one stage used to really pride itself in consulting neighbours and design their residential developments so that they would fit quietly into the suburb, and you could not say "Oh, that is public housing" because they fit in. That was good for the neighbours but it was also very good for the tenants because they did not feel like, "Oh, I am in public housing." That is a really important thing as well. I think that, somehow, public housing has become a lot more aggressive in the size and scale of the developments—not wanting to consult with neighbours whatsoever—and that is causing them trouble. So I think there would be a lot less appeals to ACAT if Housing ACT became a good neighbour.

Mr Hamilton: Absolutely; I agree with the point that Ian just made. We worked very hard, and we have quite a good housing complex. But it has been a struggle to get there. I would prefer that we did not do it the way we did. Because of how they went about it—the way they announced it as though it was contentious and the way they vilified the community for raising any sorts of concerns with what they wanted to do—they ran into their own train wreck, essentially, with how they set it up.

As some other people said in previous witness statements, the housing complex is great. The tenants love living there. They are just like the rest of our neighbours. You get a mix of personalities and people, and their housing is quite good. That was not the point. Working with Housing ACT has been troublesome compared to the task force. Once we had the right people in the task force, they were actually very professional and they did whatever they could. They just did not have enough time, because the consultation was started way too late. It was squashed in.

Like I said, we had families, jobs and everything else. We did what we could to get as much done with them as we could. What we need is an earlier consultation process, earlier design, dispute resolution and facilitation between all the parties without anyone else there to tease out all the different issues and get what everyone wanted. Also, there is a journey there in that everyone comes with their own set of values. Some of those issues needed more time to be reconciled.

If mediation had been a better process than what it was—if there had been good behaviour in that mediation and there was a track record of what they were doing there to resolve the disputes—rather than what we were subjected to, then there would not have been a need for them to spend the amount of money they spent on ACAT, because

we would have got what we wanted. I actually think we could have done even better. The design and what we got could have been better. It meets minimums for six-star, but there is so much more from a sustainability point of view and from a liveability point of view that it could have done.

But, again, we did not have the time. We found out afterwards that, even though they had plans, they delayed and deferred, until after they had won the election, before they came out and started pegging stuff into the ground. When we raised concerns, they went political straightaway, which is not what we were doing. We just wanted to know what we are doing as a neighbourhood, what we were going to get, who we were going to be living with and what that was going to look like. I think they are genuine concerns for anyone.

Mr Anderson: I think we need to go back to basics, and the basics—what Andrew and Ian have been talking about—relate to the consultation process. The first thing is that the consultation process with public housing is non-existent. They come along with the finalised plans and say, "Oh, we've got to consult," as happened in one of our meetings. We chased public housing for over 12 months in relation to Holder because we knew something was going on. We got to a point where they finally came along to a meeting to consult, and the first thing they said was, "We lodged the development application this afternoon." Where is the consultation in that? You have to go back to the basics, do your consultation and get that right.

The second thing is that, with public housing, you have to lodge compliant plans. Part of the problem with all of this is that the plans are not compliant. The third thing is that the Planning Authority is approving plans which are not compliant. That is one of the reasons why these cases are going to ACAT, because there is no alternative.

Mr Hubbard: Can I raise something associated with that whole notion of consultation? When you read the bill, and especially the explanatory statement supporting the bill, there are a couple of key rationales as to why it is important that we get rid of third-party appeals. The first one that is important is the rationale that third-party appeals cause unnecessary delays in the delivery of public housing stock.

That is a complete fabrication, and anybody who has been involved in building any residential house whatsoever will know that it often takes two or more years to go from the conception through to design and approval, and that is before the building process even commences. During the building process time, there are delays for numerous reasons. Pushing for a ban on third-party appeals because of the delays is completely baseless.

When you look at a realistic building timeline, there is plenty of opportunity for community consultation and proper assessment. What we see is that the groups who have a vested interest in efficient building ignore the fact that, when you look around Canberra, there are plenty of examples of delays in construction of buildings—and I mean where, for years, there have been no third-party appeals. I refer to the Foothills site near Campbell high, which is a big smudge at the bottom of Mount Ainslie, and what is happening there. They have approval and everything, but it has been delayed. Nothing has happened there for a couple of years.

I think that this rationale for the bill is a complete fabrication, and the committee should think, "You haven't given sufficient support in your arguments to actually support the rationale for getting rid of third-party appeals."

The other rationale which is really important in the bill is that third-party appeals stop the provision of public housing and that, because of that, it impacts low-income people and the time on the waiting list. This, again, is a complete fabrication, and it is blame-shifting, because when you look at reality, what we have seen in Canberra—and it was really blatant for anyone who looked up and down Northbourne Avenue—is that there has been an overall sell-down of public housing stock, despite the growth in population. We have fewer public housing houses now than we did 15 years ago. The idea that third-party appeals have stopped the provision of public housing or extended the waiting list is a complete fabrication.

What has really happened—and you have to ask whether the government is really concerned about providing housing for low-income people or having an impact on the waiting list—is that there has been a complete underinvestment in public housing. Building housing is not hard. In fact, building public housing is easy. You just have to spend the money, and that is what it has not done. This government has not spent money on building additional housing. That is shown in the numbers over the last 10 years, where the stock of public housing has actually decreased. Every now and then, I hear the minister for housing say, "We're spending an absolute fortune on building new housing." If that is the case, why don't the numbers say that?

Mr Anderson: Can I back Ian up on that? We are told that 130 public housing dwellings have been held up by appeals over the last five years. That is 22 a year. How many public housing dwellings have been proposed and approved in the last five years? This is a nickel-and-dime trick by the government. They are just trying to nickel and dime, and they want to get the appeals out of the way because their agencies are not doing the right thing.

Mr Hubbard: I think it is a bit worse than that, Tom, and Andrew raised it as well. This idea of third-party appeals is really a disgraceful attack on the community. Andrew, I think you also said that, as soon as you oppose one of these DAs, you get completely vilified. With that group, Greater Canberra, the number of names that we have been called by that group for trying to get a better outcome on a DA is just incredible.

In Sunday's *Canberra Times*, there was another article—they get very good access to the *Canberra Times*—calling all of the volunteer community members and neighbours, who wanted to have a comment on a building development, cranks. I know a lot of them, and they are pretty hardworking cranks. They are not paid to get involved in this, but they definitely get an absolute belting from the minister for housing, saying that it is vexatious litigation. I do not know how many names I have been called, but that does not worry me.

It is disgraceful that the government, who are being questioned about the spending of public money, can have such a personal attack on genuine community members. I think it is ironic that elected representatives of the community are seeking to ban community members from questioning decisions made by the government to spend public money.

Mr Hamilton: Going to what Ian just said, our only intention, with everything we did when we were engaging, was to get the best outcome for the existing and the future residents of Holder. In whatever way they choose to live there, whether it is in a rental property that is provided by government or by buying their own property, our motivation is to make sure we get the best outcome for every resident of Holder. That is what we are doing.

In terms of fabricating, blame-shifting or whatever they want to call it, if you look at one of the submissions, as part of their reasoning for this bill, they said:

> Since the Act commenced, inquiries have been received from Housing ACT and ACT Health regarding potential TPP declarations … including requests for seven development proposals for public housing of different sizes (between 9 and 30 dwellings) …
>
> The above housing applications have now been withdrawn as the Government considered that requests for individual public housing and public health facilities against section 218 of the Act is inefficient in practice …

That is from the government.

THE CHAIR: That is from the government submission. You are certainly welcome to quote from that.

Mr Hamilton: Okay. They are trying to paint the community as delaying, and that is just so disappointing. We put our heart and soul into our community and into getting the best. They turn around and say, "We want to get rid of all ACAT third-party appeals because we can't trust the community to act in the best interests." Are they acting in the best interests of anyone by delaying goodness knows how many houses? That is a manufactured crisis, as far as I am concerned. There is nothing else you can say about that.

We are losing the consultation period right now. With those seven proposals, wherever they are, regardless of whether they go through the DA process as it is, whether they go through section 218 or whatever, they should be on the table, and people should be having a conversation about them now. That is the issue: they just do not like consultation.

Mr Hubbard: It is important to give credit to Housing ACT for a couple of developments that they did, close to where I am in Ainslie. They did a knock-down on a block and put two residences on that block. It was a corner block, and they fitted into that street perfectly. I watched that development unfold, and go through the DA process, and there was not one appeal. No-one was interested in appealing because it was so well designed and fitted in perfectly. I thought that was excellent on behalf of Housing ACT. But every now and then, for whatever reason, they really go for broke on the density, because they are allowed to put an additional unit on most blocks compared with what a private person can do. They get into trouble because of the block shape or the position in the street is not right and it will cause a whole bunch of issues.

THE CHAIR: Ian, can I test your memory? In which year was the good one?

Mr Hubbard: That would have been three years ago. If you look at it, it is a little, red-brick, single-level, with two units. It is a little duplex, because they are joined at one of the walls, but they point towards different streets. I could tell you where that is, offline or whatever. I think there were two or three of them really close together. It is not that far from North Ainslie primary, in that sort of area.

MS TOUGH: What you said, Ian, goes to the question I wanted to ask. Ian, you mentioned the one that no-one opposed, that was fine, in Ainslie. Have there been any others that you, as an individual or as part of the community association, have publicly supported going in? Ian, you said that no-one opposed that one, but have there been any where people have gone above and beyond in saying, "This is coming; this is a great one, please, everyone, support it"?

Mr Hubbard: I think that is a really good question because it goes to the idea of how to meet the zoning requirements of a particular area at a particular time. Zoning is being changed. The government is trying heavily to change the zoning in a lot of areas, and sometimes public housing is being used as a bit of a battering ram to increase the density in certain areas.

One of the things that I thought was really important was along that Northbourne corridor. When it was all rezoned, a lot of it was RZ1, going right up to Northbourne Avenue, and then it was rezoned to RZ3 and RZ4. That was a fantastic opportunity to quarantine some of those blocks for Housing ACT and say, "Housing ACT, here's a bunch of RZ3 and RZ4 blocks that you can use to put in multistorey public housing." If you walk through Dickson, Turner and O'Connor—all of those suburbs along that Northbourne corridor—where all of those two- and three-storey multi-unit dwellings are at the moment, there could have been an opportunity to put public housing back into that well-located area, after they had sold off so much on Northbourne Avenue.

My understanding is that they took up none of those blocks for Housing ACT, or maybe one or two. One of them, which I think is on the Wakefield Avenue side, towards Northbourne, was built during what was called the renewal project. That looks like something out of a brutalist nightmare. It is really packed in. It looks pretty ugly. They could have done a lot better on the design.

When you look at the private, similar-size buildings around them, they are all luxury units and luxury apartments. I think that is an issue. If public housing had been given the opportunity to take up a lot of those blocks that were zoned for that sort of intensity, they could have done really well. But the problem now is that they are trying to shoehorn some of those multi-unit developments into RZ1 blocks, and that is causing them trouble because they are too big for the sites, and they do not quite fit. That is what is causing some of these appeals against housing.

If you read the really good submission from the Inner South Canberra Community Council, they give an example of where public housing got over-enthusiastic about scale and height on a building, and it does not quite fit. Where they have tried to fit in, they do it really well. They could do some great stuff on blocks that are zoned and fit in with all the other multi-unit developments that are going on around that Northbourne corridor. That is a real opportunity; unfortunately, the government has asked them to

purchase that land at market price.

Mr Hamilton: While we have not been involved in any additional proposals, as the project progressed, even though we had been through ACAT, we definitely continued to work with some very good people within the taskforce, to the point where, when they had finished the capex build, when they had finished the infrastructure build, we looked after the landscaping between when they had finished and when it was handed over.

We had a welcoming barbecue for all the new tenants, and we tried to introduce them to the community and make sure they knew what was going on. As I said, we think our model was better than a blanket declaration that just gets everyone's back up and treats the community like it is a villain. It wants to be part of this, and it wants to be treated equally.

Mr Anderson: In the 10 years that I chaired Weston Creek Community Council, I do not think there was one public housing proposal that met Ian's standards. It was always a matter of saying, "Let's talk about it." As Andrew said, "Let's negotiate." We had Wright, Chapman and Holder, and all of those were a battle. People marched from Chapman into the city, to the Assembly, in relation to what was going on. It has not been a very good experience for the community, certainly in Weston Creek and part of Molonglo, regarding public housing.

MS CARRICK: Ian, I think what you were talking about was the asset recycling initiative, where they took the housing out of Northbourne Avenue, the inner south and some areas in Woden, and it went to the light rail.

Mr Hubbard: Yes; Manuka

MS CARRICK: Yes.

Mr Hubbard: I think that is right, and a fair bit of revenue was gained from that. As I said, they could have quarantined some of that land for public housing, but they chose not to. I remember the minister for housing at the time saying that they would require 15 per cent of all of those developments to be public or social housing. Of course, none of that occurred.

Once again, most of the blame for the lack of stock really lies with the government, in not making the investment in public housing when they had the money. It is simple: spend the money. If you ask, "Where's the money coming from?" I think it is all about priorities. Does the government really have priorities to support public housing?

Some of the areas that I thought might be useful, and where money could be found, include the $8 million annual payment to Thoroughbred Park. That could possibly be used for public housing, not to mention that public housing could go on that site. There is also the revenue from lease variation charges. Why wouldn't you spend that on social housing? It is free money, due to up-zoning certain bits of land. And what about working to try and make public housing cheaper?

The asset recycling idea is just a complete fiasco. It does not make financial sense. With the idea that you knock down two houses to build two houses, and then wonder why

you do not get enough money to build more, talk to your local IGA owner or someone like that to figure out how you actually make money out of doing this sort of stuff.

After this inquiry, we should have an inquiry into how to make housing more affordable for the average Canberra household, and how to drive down the cost of housing for Housing ACT. At the moment they are building some of the most expensive housing in Canberra. They bought the five blocks along Cowper Street in Dickson for six million bucks; they have knocked them down and they will put 20 units on that site in Cowper Street. That is a very expensive build. How they provide public housing should be looked at as well.

THE CHAIR: Thank you, Ian—so many excellent ideas. I will go to Caitlin to ask a final question; then we are at the end of our time, so we will have to wrap up.

MS TOUGH: This is directed at Ian. You talked about all of those developments through Ainslie and Dickson—mostly multi-storey apartments and townhouses. Are you aware of Housing having any housing tenants in those buildings? Is it a mix of private people living in it at one end, living in it or renting privately, and Housing tenants?

Mr Hubbard: No, I do not think they do. With the financing of Housing ACT, they are very close to being a non-viable financial organisation. When you look at their books, you cannot make a lot of money from rent revenue from people who are only required to pay 25 per cent of their income. The financial model that supports Housing ACT is not viable overall. To expect them then to be able to invest in housing is just ridiculous.

To take up your point, one of the reasons why Housing ACT do not often get involved in apartment-style buildings is because of the strata costs. When you are only getting 25 per cent of someone's income, and they are on a pension or a benefit, they do not provide sufficient funding to cover the strata costs of being in a private apartment block. That is why quite often they do not get involved in these buildings.

Quite often you will find that the body corporate also does not like allocating Housing apartments to public housing, because of the stigma. A developer will say, "No, I don't want to have any public housing in my building." That is the problem with the original promise that 15 per cent of all developments would be social housing. They banged into the developer and the body corporate, who did not like the prospect of public housing people and what it might do to the price of the apartments.

Most of the community groups would say, "We have no problem whatsoever with public housing people living in our community." In fact, I have a couple who have lived next door for 30 years. They are old, but they are fantastic. They kept my kids in strawberries and vegetables as they grew up, and it was absolutely great. That is the problem, I think; it is the finances regarding how this works, and people overlook it. With public housing, Housing ACT is skint.

THE CHAIR: Thank you for that excellent evidence. Thank you, Andrew, Tom and Ian, for your contributions, and thank you for those well-considered submissions. We have a lot of the evidence and the data in there as well, so thank you.

On behalf of our committee, I would like to thank Broadcasting and Hansard for their support over a long day. As always, thank you very much. I do not think we took any questions on notice. If any members want to lodge questions on notice, make sure that you lodge those within five business days. We are now adjourned until tomorrow.

The committee adjourned at 5.04 pm