

DEPARTMENT OF THE SENATE
PAPER NO. 1020
DATE 1967
PRESENTED
J. R. O'Connell
Clerk of the Senate

1967

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TWENTY-THIRD REPORT

from the

STANDING COMMITTEE

on

REGULATIONS AND ORDINANCES

(Being the First Report of the 1967 Session,
and the Twenty-third Report since the
formation of the Committee.)

PERSONNEL OF COMMITTEE

Chairman:

Senator I.A.C. Wood

Members:

Senator R. Bishop
Senator J. L. Cavanagh
Senator G. S. Davidson
Senator D. M. Devitt
Senator A.G.E. Lawrie
Senator R. C. Wright

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

TWENTY-THIRD REPORT OF THE COMMITTEE

The Senate Standing Committee on Regulations and Ordinances has the honour to present its Twenty-third Report to the Senate.

Australian Capital Territory Ordinance No. 27 of 1967

Freehold (Subdivision and Use) Ordinance 1967

2. This Committee is informed that no Town plan has been prepared for zoning of the A.C.T. This is almost unbelievable in relation to a territory and a city of the significance of the A.C.T. and Canberra.

3. The Ordinance No. 27 of 1967 is of an interim nature and is expressed to operate only until 30 June 1968. Its temporary duration indicates its rush nature. It is not unusual for such temporary legislation to be continued indefinitely.

4. But the Ordinance operates -

- (a) to legislate for specific areas thereby discriminating between them and other areas; there is no provision for zoning after a public right of objection as is common in State Planning Legislation;
- (b) to prohibit subdivision of land except in accordance with an approval of the Minister. The Minister may in his discretion grant or refuse to grant an approval. He need state no reasons, give no hearing and act on different grounds in similar cases;

- (c) to prohibit a grant by the "proper authority" of a permit for the erection of a dwelling house, hall or community centre under the Canberra Building Regulations, unless the Minister has approved its erection;
- (d) to prohibit building for "prescribed purposes" which are spelt out by the Ordinance to mean -
- (i) a hotel, picture theatre, shop, service station, factory or saw mill;
 - (ii) flats or home units or other residential accommodation of a kind commonly known as a flat or home unit;
 - (iii) a motel or guest house or a building, however described, for the provision of accommodation of a kind commonly provided by a motel or guest house;
 - (iv) a restaurant or cafe or a building, however described, for the provision of services commonly provided by a restaurant or cafe; or
 - (v) a stall for the display or sale of goods."
- (e) to prohibit the alterations of or addition to buildings unless the Minister approved.
- (f) to prohibit the use of buildings erected in specific areas for certain purposes without the approval of the Minister.
- (g) to make void certain contracts for purposes contrary, to those prohibitions.

5. The Ordinance is obnoxious to the principles which this Committee is constituted to support:

- (a) It unduly interferes with rights of property and contract by means of Ministerial discretionary decision;
- (b) the Minister is bound by no rule of law.
- (c) there is no right of appeal to any tribunal or any Court of Justice from the Minister's decision;
- (d) the Ordinance is discriminatory without giving the public the right to object to zoning in the manner customary in State Planning legislation.

6. It is therefore recommended that the Ordinance be disallowed.

7. Our recommendation imputes no want of good faith to any person. We are concerned with the maintenance of a system which does not make the rights of persons unduly dependant on administrative decision without protection of the Courts of Justice. Nor do we fail in appreciation of the merits of proper town planning.



IAN WOOD,
Chairman.

Regulations and Ordinances Committee Room,
Thursday, 5th October, 1967.

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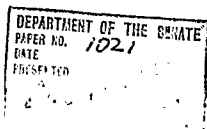
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Ian Wood

IAN WOOD,
Chairman.

Regulations and Ordinances Committee Room,
Thursday, 5th October, 1967.



A.C.T. - FREEHOLD LAND (SUB-DIVISION AND USE)

ORDINANCE NO. 27 OF 1967

THE PARLIAMENTARY STANDING COMMITTEE

ON

REGULATIONS AND ORDINANCES

TRANSCRIPT OF EVIDENCE

(Taken at Canberra)

THURSDAY, 21 SEPTEMBER 1967

Present:

Senator Wood (Chairman)

Senator Bishop

Senator Devitt

Senator Cavanagh

Senator Lawrie

Senator Davidson

Senator Wright

MR JAMES ANDREW COSTELLO, Director (Planning) Department of the Interior, and

MR ERIC WIGLEY, Assistant Secretary (Lands) Department of the Interior, were sworn and examined.

Chairman

We would like some further information on Ordinance No.27 of 1967. The matters about which we would like this information are related to sections 4, 5, 6 and 7. The purpose of the ordinance is to obtain control over certain lands in an area for which no plan has yet been devised. The Ordinance vests in the Minister control over subdivisions and building in the areas concerned. They are wide powers which are sought, and the Committee would like some argument from you as to why you feel these controls and powers should be granted? ---

(Mr Costello) I think the basic problem can be said to be that the expansion of Canberra in recent years has brought about an influence wider than was originally anticipated. This has been accentuated in recent times with the alteration of planning from the north to further development in the south which was not envisaged originally. The problem arises because certain areas of land on the outskirts of the Australian Capital Territory were being exposed to these influences far in excess of what was anticipated originally. We in the Department saw some development this way last year and investigations were started for the purpose of bringing in complete legislative control in the accepted sense. The purpose of the ordinance is twofold. Firstly, it is to protect the essence of Canberra as a national capital by avoiding having on the immediate outskirts of the national capital undesirable fringe development, unattractive commercial development and so on, and also to prevent the type of ribbon development that occurs in the approaches to large cities. Basically, the purpose of the ordinance

is to protect the national capital, but it also seeks to preserve the community atmosphere. The first is not a concept which is embodied in Australian town planning. Therefore, we have not been able to get guide lines on it. We have been developing ab initio. Australian town planning, so far as it has been developed to date, has been essentially on community protection and it has developed from this point only. This is one side only of our problem. We have problems connected with the protection of the national capital and then the protection of the community. The latter side of the ultimate development, the preservation of the general amenities of the areas which will be subject to development, the demand upon the community for urban servicing which could not be supplied perhaps commensurate with the development is one of many principles applied in State urban planning. These are some of the principles which would have to be taken into account with respect to the urban amenity problem and can be identified from State planning. Then, of course, there is the possibility of future land requirements for the expanding city. In this respect we have regard to the original concept of the development of the Australian Capital Territory to provide, amongst other things, sufficient water, drainage and so on for the national capital. Some of these areas which are subject to the freehold land controls are Naas and Gungahlin to the south, and at this stage these areas could be potential much needed water supply areas but current development has not proceeded to the stage where we can be specific enough. Our attention has been directed to clarifying all this with the idea of getting a specific set of proposals in the normal way and having a legislative pattern upon which these can be based. Our difficulty has been that unfortunately development has occurred more rapidly than we anticipated. This has been accentuated by the recently announced

development of the capital to the south and one of our problems here is that if this goes completely unharnessed in the intervening period a great deal of damage could be done and individuals could suffer. This was the basic reason why we felt it necessary to have some interim control.

In the same way as the States allow for interim control when a plan is being prepared or has been prepared and is being processed, the same position applies. Unfortunately we do not have the complete legislative pattern that the States have under which they bring these interim orders into play. This has been rather difficult. The purpose of the interim legislation is not so much to control but to preserve the status quo. When we examined this we took it that it could be done one of two ways. It could be a complete freeze. We thought that a period of approximately 12 months would be necessary. Then we thought if we had this complete freeze and prohibited all development for 12 months that would give the answer and the development could occur under the control system. If we brought this sort of prohibition down we could create problems with individuals; for instance, a person who had a block and wanted to build on it or a person who had a large farm and wanted to have a member of the family sublet the far portion of the allotments and use it for share farming or a farmer who wanted to build a hay shed. With these types of development we thought it would be unreasonable to completely prohibit that for 12 months. From this point of view we do not know how far these desirable elements in this go, but we did not want to prohibit them completely. This generally is the background as to why the legislation has been drawn in this pattern.

Senator Devitt

You have mentioned that the first alternative was the complete freeze. What was the other alternative?

--- The line that we have taken.

Chairman

Does it not seem rather strange that the whole of the area set out for Canberra belongs to the Commonwealth Parliament and why some classification of use of the land in association with a complete plan of the area has not been evaluated years ago? Do you not think that the Commission has been very lax in not bringing this to some fruition? The situation is that the Department is more or less trying to freeze development in the whole Canberra area. Every town plan is planned right to its very boundary. Why did not Canberra have this before? --- (Mr Wigley) Perhaps I could give a little background information on this. There are some 86 holdings of freehold land.

Senator Wright

Has anybody a plan? --- Yes, there is a plan here. It is rather large.

Would you open it out, then the whole Committee could see it. --- The land with which this ordinance is concerned is the land coloured yellow.

Senator Cavanagh

The ordinance covers the whole Territory. --- It is concerned only with freehold land. All the land except the yellow land is owned by the Commonwealth.

There is some freehold land in the village of Hall, some small allotments which are used mainly for residential purposes. There are some residential blocks in the area known as the Oaks Estate across the railway line from Queanbeyan and some down in the village of Tharwa. You can see that the Commonwealth had acquired or had passed to it from the State as Crown Land all the other land which is there, except the yellow. I have been unable to ascertain precisely why these areas were left; in other words, why all that was acquired and some pockets left as freehold. This goes back quite some years of course. Those yellow areas total some 90,000 acres, something less than one-fifth of the total area of the Territory. The area with which the National Capital Development Commission is concerned is mainly the area around the city. From our discussions with them it is quite clear that their future plans for the development of the city lie generally to the north side of the Murrumbidgee River, the land on the other side not lending itself readily to urban development.

Senator Wright

The ordinance does effect the freehold land to the south of the Murrumbidgee River? --- Yes, both sides.

Senator Bishop

Including Hall? --- Yes. There is a slight difference in the ordinance. The ordinance does make a difference between the generally rural areas and the land

in Hall. Perhaps Mr Costello might explain this. I think basically the difference is that the areas in these villages are for residential or perhaps business purposes and the sort of controls that we had in mind are really for rural areas. We would not envisage that a freehold owner in Hall, Oaks Estate or Tharwa would want to erect a shearing shed. This would not be part of a residential lease. The owner of freehold land in other areas would or could want to erect a shearing shed. In that case it was not envisaged that the Minister would prevent such a building being erected.

Senator Wright

Has he power to do so? --- I think the ordinance has excluded certain forms of buildings.

Senator Cavanagh - The definition is 'no prescribed purposes'. That is contained in Section 6 (3).

Would you tell us the interpretation of the provision? --- (Mr Costello) The provision is under Section 6. The control is exerted in respect of those small allotments which comprise Oaks Estate, Hall and Tharwa. The prescribed purposes are defined under Section 2.

The section refers to freehold land in the part of the Territory 'other than'? --- I am sorry, I am looking at the wrong section. The provision here is Section 6. It is the rural land other than Oaks Estate, Hall, and Tharwa. The provision is that in those rural areas the proper authority under the Canberra

Building Regulations is not permitted to grant a permit for the erection of a building for use as a dwelling house, hall or community centre along the lines to which the section applies, unless the Minister has approved its erection. The point is that this would enable a farmer, for example, under this to build his normal outbuildings.

You are not making it very clear to me. To which section are you referring? --- To section 6.

What does it say? Refer to the specific part of it and then explain its application? --- Sub-section (1.) restricts its application to freehold land other than the land that is within Oaks Estate, Hall and Tharwa.

What does the section say with regard to all freehold land other than in those three places? --- It purely provides that before the proper authority who controls building may issue a permit under the building regulations to enable the erection of a building for use as a dwelling house or hall or community centre, the applicant must have the approval of the Minister to erect those premises on that land.

What is the justification for that? --- The reason for it is to prevent in an underhand fashion the erection of such things as motels and so on.

But what it says here is that the building authority is prohibited from permitting a dwelling house to be erected except with the approval of the Minister. What is the justification for that? --- The justification would be that a person may apply under the building regulations for a permit to build. He may call the building a dwelling house, but in fact that building may be designed in such a way that it can be used as a boarding house or hotel.

But the building regulation already prohibits you from using it for any purpose other than that for which the permit has been given by the building authority, does it not? --- No.

I have not looked at the regulation, but if it does not I am amazed at the deficiency of it? --- It is just restricted to the control of the actual building.

We have it now firmly in our minds that you are asking for permission to prohibit the proper authority from

permitting the erection of a dwelling house without the Minister's approval? --- Yes.

What does (3.) say? --- While this ordinance continues in force, the proper authority shall not grant a permit under the building regulations for the erection of a building on land to which this section applies if the building is for use for a prohibited purpose.

'Prohibited purpose' is defined? --- Yes. It is defined in sub-section (2.) of section 2, paragraph (d), which reads:

A reference to the use of a building for a prescribed purpose shall be read as a reference to the use of the building as -

- (i) a hotel, picture theatre, shop, service station, factory or saw mill;
- (ii) flats or home units or other residential accommodation of a kind commonly known as a flat or home unit;
- (iii) a motel or guest house or a building, however described, for the provision of accommodation of a kind commonly provided by a motel or guesthouse;
- (iv) a restaurant or cafe or a building, however described, for the provision of services commonly provided by a restaurant or cafe; or
- (v) a stall for the display or sale of goods.

In effect, the substance of section 3 is to say that with regard to the whole of the area other than Oaks Estate, Hall and Tharwa, none of these buildings can be permitted absolutely? --- That is right.

There is a complete embargo? --- Yes.

Senator Cavanagh

What is the necessity for this? Why prohibit, say, a shop? --- This is the area outside established villages.

Senator Wright

Paragraph (d) of sub-section (2.) of section 2 refers to residential accommodation of the kind commonly known as a flat or home unit, to a restaurant or cafe and to a stall for the display of goods. You say that you have not got anything analagous to State town planning legislation

in operation in the Territory? --- That is so.

The Chairman has referred to the time factor. I wanted to ask you why you could not frame the ordinary town planning legislation in the form of an ordinance with the same facility as you frame this. Why could you not adopt the principles of town planning from the State legislation and apply them by ordinance as such? I am referring now to what appear to me to be arbitrary powers that you seek? --- The answer to that is that if we had to be concerned only with community interests that is all we would need to do, but we have the other problem that we are also trying to preserve the national capital.

Take the area at Rendezvous Creek, which is part of the area subject to this regulation. What is the interest of the national capital that prevents you from having a cafe or stall in that area? --- At this point of time we are still working this out. We know that some of this immediate planned development is working into this area within the next 15 years. We know that the immediate water supply for the city from the Cotter area will not be sufficient to cater for the city's development within another given number of years. We also know that we are going to have to rely a great deal on water supply from the eastern water shed of the Tidbinbilla range.

But, surely, in so far as you foresee water supply, the thing to do is to acquire the land that will be the source of your water supply. That is not a subject of town planning as a rule? --- This is one of the problems. Until such time as our research is specific and our investigations indicate just what we do need, complete acquisition itself would be unreasonable. A couple of recent newspaper reports of one of these sub-divisions which have recently been processed indicates a degree of uncertainty, yet, in all fairness to purchasers, they must be made aware of it.

These are in the areas that we are discussing?

-- That is right. I have the plan of the particular subdivision here which is affected by this:

We dealt with Section 6, to take a specific example, and we saw that it related to dwelling houses. Then as to buildings for prescribed purposes it includes home units, flats and cafes. You test the reasonableness by its application to the land on the other side of the Murrumbidgee River. How can it possibly be suggested that the Minister should have the power to approve of every dwelling house proposed to be erected there, big or small? --- (Mr Wigley) The Tidbinbilla Fauna Reserve is in the area. There was some similar land which was required by the Commonwealth last year. It was in mind to acquire it as it was necessary to include it in the reserve. It is part of the valley. For the natural topography features it was necessary to acquire this. While the department was considering the need for this one of the land holders, who had some property at the then entrance to the reserve, was proposing to erect a motel, caravan park and kiosk. Word of this got around the place and the department was subjected to quite a deal of criticism from people who were afraid that this development was going to spoil this.

The Department has had 40 years to zone the area. It should have determined for everybody just what use could be made of the land in a particular zone.

Senator Bishop

Where are the sub-divisions concerned? --- These were done before the ordinance was drawn up and the particular sub-division to which I am referring had already been lodged with the Titles Office. In fact, it has been advertised for sale.

The point with which the Committee is concerned is that the Minister or an official in the Department should say that Y can build a motel on black acre but X is prohibited from building one on white acre. It is the method by which you are achieving the restriction? ---

I would like to go back again to mention that over the years no insuperable problem arose because of the Commonwealth's lack of control of this nature such as exists in all the States. The land is being used mainly for grazing and agricultural purposes. There was an occasional subdivision but the public generally were not concerned. Indeed some of the local solicitors came to the Department and asked for approval for their subdivisions. I think their basis for this line was the Real Property Ordinance where there is the requirement that the Registrar has to satisfy himself that a survey has been carried out and plans drawn to certain technical

requirements. It has been the custom over the years that the Territory has been a territory that applications of this kind have been fairly rare and on infrequent occasions only have these people come to the Department with their plans or that the surveyors have brought their plans to be certified or that the surveyors have been before the Registrar of Titles who had to be satisfied sufficiently to register any dwellings on the land. As I say, these were very rare occasions.

For 40 years it has been common State legislation to say that nobody shall subdivide and the Registrar of Titles shall not register a plan of subdivision unless it is approved in accordance with a plan by the local authority. Why has that not happened here? --- (Mr Costello) I would like to refer back to the map again in respect of the situation in Canberra going back, let us say, 40 years. It was never envisaged that Canberra would extend beyond certain boundaries. The Commonwealth owned all the land within those boundaries. The end result from the Commonwealth's point of view was that it should not have any interference with what might be done there or it should not have undue interference.

You are referring to Lanyon? --- Yes. The situation is that in the post-war period the previously unforeseen rapid expansion of Canberra did place some strain

on the area. The planning which had developed particularly in the period since 1958, when the Commission was established, was a part from this development to the south of the established Canberra area; that is the Woden area. The planning was for Belconnen, Majura and Gungahlin. I draw attention to the fact that it was within this total area which was acquired by the Commonwealth; this area north of the Murrumbidgee. It was always envisaged that the city would lie within that. The problem has been that the development of Woden and the commencement of Belconnen has meant further planning and investigation had to be done by the Commission. They found that some of the areas which had been planned were unsuitable.

Senator Davidson

Why unsuitable? --- Numerous reasons; some topography, some in respect of previous land use. For example, I refer to the Majura firing range where there could be numerous unexploded shells and heaven knows what. Other reasons could have been the general pattern of the established services such as sewerage. For example, Belconnen necessitates a complete sewerage system of its own but has an outlet. Majura would have had to have its own system, but it does not have the access out. The emphasis then changed

over to the other area at reasonably short notice and a need arose to ensure that no problem arose from this. Senator Wright raised the question of the need to control an area down towards the south.

What is that area? --- One of the small areas down towards the south, in respect of a house as distinct from a commercial development. The essential point here is that what we are striving to achieve in this interim period of only 12 months is to ensure that the person who wanted to build his own house or farm buildings would not be hindered. He would not present any problem to anyone else in the years to come, whether to us by acquisition or neighbours.

The Minister has to give approval? --- Yes.

The Minister may not approve? --- He may not.

Senator Wright

He may approve for one but refuse for another for reasons that are not specified in the regulations? --- This I concede. One of our problems has been to be able to identify and spell out in full the guide lines because we are still investigating and developing the principles.

Senator Cavanagh

Is it not an offence to use the land in the 12 months period? --- There is no offence in respect of use

of the land itself.

Senator Bishop

Under Section 6 (3.) you tie up prescribed buildings. The point is that you deny people certain things but in respect of a dwelling the Minister can refuse for no reason. No guide line or criterion is established under which a person knows whether he is entitled to build or not. That is the sort of thing that is worrying us? --- (Mr. Wigley) This is merely an interim ordinance. We have talked about 12 months. It came into effect on 27th July, I think. The ordinance says that it will cease to operate as from 30th June next year. We hope by that time, which we hope is before that time, we will be able to introduce permanent legislation which will give guide lines and will provide the grounds for objections or appeal and that sort of thing. In the meantime we have some subdivisions which are shown on this further plan which might help you to appreciate our problem that we see here. It might also indicate that the Minister's approval - it was not intended that the Minister's approval would be withheld in any unreasonable way. We felt that if there happened to be a case where the Minister felt his approval should be withheld this could happen, as you will appreciate. Without any control over subdivision we could, for instance, have a block of land which may be very narrow and very long, going back from a road to a river.

In the Yarrowlunla Shire outside the Territory boundary, the interim order says that the minimum size block shall be 50 acres, but these interim development orders of New South Wales go on to talk about frontage and depth. You could have 50 acres and it would be very long and narrow or a very irregular shape, which would certainly not be in the public interest.

Senator Wright

What is the relevance of that to this? --- If a sub-division of that nature were put before the Minister here, thought would be given to withholding approval. Having in mind that the 30th June next year is not very far away, and remembering that we hope that permanent legislation, guide lines and so on will be available by then, perhaps the worst that could happen to the individual would be that he would be delayed a little in implementing his sub-division and he will have a chance of appealing when the permanent legislation came into force.

But the usual experience in the States is that it takes 3 or 4 years to get a town plan. Although you have set down next year, in my view that is completely unrealistic and you will be coming to us to extend it for 3 years after that, and another 7 after that? --- Could I point out with respect that the legislation in the States is of a rather more complex nature than we anticipate. Also, it is only a relatively small area that is involved here. There are not a great number of land holdings involved, and the variety of uses is not very great.

Is there any specific project that you have in mind that is going to create a difficulty and that you mean to stop by this regulation? --- No, there is nothing that we know of at the moment.

There is no actual case that evidences a need for this interim restriction? --- Not at this moment.

Senator Bishop

What about the sub-divisions that have been sold? --- (Mr Costello) Those have been allowed - they exist. In fact, two of them were in process of examination but we made no attempt to prevent them because they had already been done.

Senator Devitt

The thing that passes through my mind is what is the urgency for bringing down an ordinance of this kind when apparently work is now going on in the preparation of permanent legislation which will be brought into being in June or thereabouts of next year. The answer to Senator Wright was that there was nothing at the moment which seems to require an ordinance of this kind to be brought down now. Is there some thought in the minds of the planners that things will go awry between now and the time when the permanent legislation can be brought down? --- (Mr Wigley) A little while ago Mr Costello mentioned the negotiations which are current. The Commission is investigating a number of possible sources within the Territory of Canberra's future water supply. The Naas valley happens to be one of these sources. The Commission feels that this area will be needed for water supply purposes, but it cannot say when or just precisely what part. One sub-division which has been receiving a certain amount of publicity in the Press here is one in which the blocks happen to be rather narrow and long and in which there are a number of entrances onto a quite important road that links Canberra directly to Adaminaby. It is a sub-division in the parish of Cuppacumbalong, in the district of Tennent.

Senator Davidson

Is it a main arterial road? --- No, but the Adaminaby people like to use it as it is a much shorter road. It is only 70 miles to Adaminaby from here over that road.

Senator Wright

The sub-divisional blocks average about 20 acres each?
--- Yes.

Chairman

You would not call that a conglomeration? --- No, but they might construct a motel there.

Senator Wright

What area do you call that? --- The Naas valley. It is in the parish of Cuppacumbalong. As a matter of fact, there have been other sub-divisions in the area. There are about eight or nine blocks which would be of an average area of 40 acres each.

Is there any legislation in the Territory which regulates the creation of sub-divisions? --- (Mr Costello) Only the real property ordinance with respect to registration.

I would like to know what is in it? --- The provision is the normal one with respect to Torrens title requiring the lodgment of plans of sub-divisions with the Registrar of Titles before the issue of titles to the sub-divided property. It empowers the Registrar to require the certificate of the Surveyor-General that the survey has been properly carried out.

Does it say anything about minimum size? --- It lays down no standards at all.

You mean that this area has gone on registration without regulating the sub-division of land with relation to use, size and so on? --- Yes. We have no immediate sub-divisions that we know of coming up, but we do receive sub-divisions like this. As a matter of fact, we had

received sub-divisions such as this one in Cuppacumbalong within the preceding 12 months which indicated that in the absence of control something was going to go. If we had to wait until we had finished our final legislation, things would have gone too far. We had to arrest the situation.

Senator Lawrie

What are these 20 acre blocks to be used for? ---
(Mr Wigley) They have been advertised as suitable for fishing lodges and so on. I do not think any one of them could be regarded as a living area unless the living that was obtained from the land was in the nature of a business such as a motel, service station and so on. It is quite conceivable that a number of these blocks could be used for the purpose of motels, service stations, hot dog stands and so on, if we had no control. That could spoil the effect of the road which is quite a scenic road.

That is why you zone an area and why you have rules for sub-divisions. One rule applies to motels, another to hotels and so on. How can the Minister be a judge as to whether a cafe or motel should go on any particular block there and, having permitted one on Smith's block, refuse it on Brown's block? --- I take the point.

The fact is that we were really aiming to hold the situation until we got our guide lines and rules straight.

Perhaps the emergence of this plan qualifies your previous answer and you are putting forward the subdivision to show what you are attempting to block by the regulation? --- No. We have advised these people that the subdivision was not covered by the ordinance, except that in the buildings they have asked us - under the ordinance they have sought approval for the buildings to be erected thereon as dwellings. The answer that they will be given will be that the Minister will approve the buildings as dwellings. There is no intention to withhold any of these.

Chairman

Can you say that a motel is not a dwelling? ---
(Mr. Costello) That is the reason why we had to have that reservation power in respect of Section 6 (2.). We wanted to prohibit the development of the commercial facility there, which we have sought to do under Section 6 (3.), the prescribed purposes, and to ensure that a place was not overtly constructed as a guest house. These things have to be watched carefully.

Why cannot these things be made the automatic decision of some authority other than the Minister? What

would the Minister know about it? What special qualification would he have to make a decision; not just this Minister, any Minister? ---(Mr. Wigley) The method we had in mind was that when a subdivisional proposal was put to the Department for approval we would seek the advice and comments of the National Capital Development Commission. We would be guided by their advice and comments before we advised the Minister. We would foresee in this holding period - and really what we have set out to do and tried and hoped to do was to hold the situation so that it did not deteriorate. In other words, with the knowledge that the Commission is proposing certain future water storage areas it could be that some of these land holders - and they would be entitled to at the present time - would want to capitalise on the areas that they have, subdivide them, with water frontages, and make quite a lot of money. They would certainly pay very handsomely. Keeping in mind that the water authorities may not want people on the lake shore we would probably have to keep in mind at some stage to acquire these lands and pay the owners just compensation. It is all a little uncertain at this stage. We thought that anything we could get at the present time to get for this admittedly belated legislation the guide lines, avenues

of appeal and this sort of thing - this is really what we are striving to do.

Senator Cavanagh

Under the Canberra Building Regulations has the proper authority only the power to say the types and standards of construction? --- The proper authority is actually the chief architect in the building section of the Department and is responsible for the administration of the Canberra Building Regulations.

Apparently he grants a permit? --- Yes.

On what ground can he refuse a permit? --- Subject to this ordinance he would be restrained from giving a permit if the Minister had withheld approval.

Without the ordinance now? --- He would be just constrained to deal with it under the Canberra Building Regulations.

Senator Bishop

On building standards? --- Yes.

Senator Davidson

What is his connection with the Commission? --- He belongs to the Department. Plans of buildings and so on are submitted to the proper authority, which refers them to the Commission which looks at them and has power of approval or to withhold approval as to external design

of the building or siting of the building on a block!
Most of this activity is in the city.

You said that it was proposed to consult with the Commission? --- No. It is an established routine.

Even with these? --- (Mr. Costello) Yes. The Commission has no authority outside because of the terms of its Act, but we would regard them as experts.

Senator Cavanagh

Has the Commission no authority, but generally it assists? --- That is so.

Senator Devitt

The regulations cover the whole of the Territory?
--- (Mr. Wigley) Yes. The Department is responsible for the Territory.

Chairman

What is the width of the road in the subdivision and the width of the subdivisions about which you are worried? --- This road is 100 feet wide. The frontages are about 400 to 500 feet.

Senator Lawrie

Are not the measurements given in links? --- These are in feet in the ACT.

Senator Davidson

What is the situation on the other side of that road? --- They are rather bigger blocks.

Chairman

That road is a 1½ chain road. You have blocks of land of about 8 chains. Even if you had motels along there you would not get a heavy flow of traffic that would worry you on a road that wide? I do not think there would be a great flow of traffic even with a few motels along there. Has Canberra still no classification of land usages right throughout the city? --- It has not. The town planning control here is exercised through the lease. As you know, all the land in Canberra is leased.

People break leases and somebody winks the eye, which has been going on in relation to certain accommodation. Why is there not a complete land usage plan for the whole area? As Senator Wright mentioned, other municipalities have town plans, I cannot understand why Canberra has not, --- It has been thought of. I can recall the National Development Commissioner recently prepared a scheme for the Rocks area in Sydney. He was reported in the paper as saying how well the leasehold system of control of town planning matters worked in Canberra. It has worked very well. We have had such comments made from people elsewhere and overseas too, I think, when they have examined the way in which we do it here. They

think it is very effective. It is very direct.

Senator Wright

Because you own the land and let it on terms on which you wish to let it? --- Yes.

We are considering land that is owned by other people. --- I thought the Chairman was referring to zoning in the city itself.

Chairman

Right through. --- My remarks were related to the city leases, which have a purpose.

If the whole land is zoned nobody could come and buy a lease from somebody and use it for a different purpose. When they looked at the plan they would know for what purpose the land was zoned. I cannot understand why Canberra has not had such a system. I have said this time and time again, Why does not Canberra have a plan for the whole of the area? As Senator Wright says, it goes before the people, becomes statutory law and everybody knows just where they stand. --- That is so.

The whole of the ACT area should be planned to show the urban area, city plan area, rural areas and so on so that anybody seeing it would know exactly what they could do. It does not take an over intelligent person to follow a town plan. --- That is right.

Senator Bishop

Suppose the Government or the Minister told you tomorrow that you had to carry out a zoning plan in this area. How much could you effectively do, remembering your argument about water supply and so on? --- I think we could do it effectively. In fact, it is a zoning plan that we have in mind so far as this is concerned because this is freehold land and we have no leasehold contracts through which we can enforce our zoning intentions.

Senator Devitt

Is it mandatory at the moment for all sub-divisional plans throughout the whole area to be submitted to some authority for approval? --- Only for certain technical aspects, as to the plans which are set out in the real property ordinance which says that the plans shall be drawn to a certain scale.

Senator Lawrie

We have discussed at great length land other than what is contained in the three villages which you mentioned earlier. What is the reason for requiring restrictions in the three villages? There is a good bit of land outside the villages? --- (Mr Costello) It is a matter of degree. As I said before, a farmer in a rural area could build, for example, a workshop of fairly large proportions on his property and still not impair the primary use of the land, which is agricultural or pastoral purposes. On the other hand, the same type of activity in a built up area of one of the villages could in fact change the primary purpose of a sub-divided block from residential to industrial.

This applies to places already erected and the use to which they can be put? --- Yes. We are seeking to ensure that if someone has a house already there and is using it as a house he cannot use it as a factory or a hotel or a guesthouse before we bring down permanent control. The

basic purpose is to preserve the amenity of the three villages as they are at present.

Senator Cavanagh

Do not sections 8, ~~and section 9(2.)~~(a) and (b) conflict with sub-sections(3)of section 3? One says that the ordinance shall not apply to buildings that were used for certain purposes and the other says that it is an offence to use them for those purposes? --- Sub-section (3.) permits of the continued use of the land or building for the purpose for which it was used before the ordinance came in.

And section 8 takes away ~~that~~ permission? --- If it does, it was not intended to.

Section 9(2.)(a) and (b) also takes away that permission? --- I suggest that the words 'this ordinance' in section 3 were used advisedly by the draftsman to ensure that sections such as 8 and 9 did not apply. That was our instruction to him, and that is the way I interpreted the ordinance when I received it. We wanted to ensure that they could continue to use them. (Mr Wigley) It was not intended to disadvantage anybody. We tried to maintain the status quo.

Senator Bishop

Section 10(2.) is drafted in such a way...as to be quite open. Could not a more specific form be prescribed? --- (Mr Costello) I think you will find that in all Commonwealth drafting to date this is the practice. They do not prescribe forms any more than is required in trying to get a fluid situation of giving power to the Minister.

Senator Devitt

When the new regulations which are now in course of preparation are completed, would it not be desirable concurrently with them, to prepare a fully zoned plan?

--- Yes, but in the meantime we want to prevent

deterioration because it does seem rather remarkable that these sub-divisions have come along with a great rush in the 12 months or so prior to this. It is very rarely that we had sub-divisions of this type prior to that and we were a bit fearful that in the period between now and when we get effective permanent legislation there would be further deterioration that would certainly not be in the public interest and a lot of people could perhaps suffer thereby.

Senator Wright

Could you tell us the nature of your experience and duties in this respect? --- I am Director of Planning in the Department of the Interior. That is policy planning. I have the legislative section, special projects and other groups under me. I have been in the Department of the Interior for 11 years and associated with this work during the whole of my time - that is, the work of preparation of legislation and policy.

(Mr Wigley) Originally I worked for a private firm in Queensland as surveyor's draftsman back in 1936. I have been in this Department for some 20 odd years. For the last 3 years I have been Assistant Secretary of the Lands Branch of the Department.

Chairman

Is there anything further that you would like to say? --- (Mr Costello) What I would like to mention is that going back to what I indicated at the opening, we originally felt we had to choose between two alternatives. One was to prohibit completely in order to freeze. The other one was to prohibit to allow some form of alleviation. I realise the fears of members of the Committee in respect of the arbitrary use of unfettered discretion. The Minister has indicated that if the Committee really feels that the degree to which discretionary power is incorporated in the ordinance is really objectionable he is quite happy to make some alteration. The only problem that arises is what such alterations may be. This is the reason why it was put in this form. We do not like complete prohibition, but if we had to we would. The form of control that there might be in respect of the exercise of discretion, perhaps tabling in the House would be - perhaps there would be ways and means of overcoming the problem that way if the Committee so desired. We have considered the question of oversight by courts. The problem is that we have no special criteria because we

are still working them out. The courts would not have a set of criteria by which to judge the decisions from a point of law. Hence any question of oversight by a court would be one of reasonableness only. As far as we can see it is not a satisfactory proposition from the point of view of the affected applicant. The Department's advice to the Minister was on the basis that with the watering down of the discretionary authority to what we thought was the minimum, by specifying those prescribed purposes which we thought were completely objectionable and prohibiting them absolutely, the ordinance would have a very limited life and, stated on its surface, would perhaps lessen the problem to the point where it would have no real objectionable application. In relation to this point of view we would hope to guide the Committee in its consideration of the problems.

Senator Bishop

Rather than have a lot of prescribed conditions or standards would it not be better to apply them to certain areas? You would be less likely to make a mistake. I take it, from what you have said, that there are some areas where you are satisfied that certain types of building would not be possible, etc. Would it not be fairer in an interim period to apply conditions to certain areas rather than impose prohibitions which will only last for some months? --- I think the answer to that point is that we still have a fair bit of work to do to finalise these. The two points that rather concerned us

were, firstly, in the final analysis we might have to reconsider some of our earlier analyses where certain things were found impracticable and we would have to go over what we thought was really essential. If we had to go over old ground 8 or 9 months later and make certain prohibitions, that would be objectionable. Secondly, there was the problem that we thought that the specification in it in this way could well work an unfair burden at this point of time when it could not categorically be stated in full that it was desirable for these reasons because we are still establishing our criteria. We thought it could work an unfair burden on neighbouring areas.

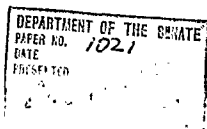
Senator Wright

To consider some application to an expert such as a town planner, with the right of appearance and appeal, and then anybody who is subject to restriction being compensated, will be getting nearer to the ordinary ideas that the community has as to individual rights? --- These are some of the principles we are working on in our permanent legislation. (Mr Wigley) I would add that we have been working in close co-operation with the National Capital Development Commission on a land use plan for the Territory. We have progressed. It is now precise.

Chairman - Thank you, gentlemen, for your attendance.

The witnesses withdrew.

The Committee adjourned.



A.C.T. - FREEHOLD LAND (SUB-DIVISION AND USE)

ORDINANCE NO. 27 OF 1967

THE PARLIAMENTARY STANDING COMMITTEE

ON

REGULATIONS AND ORDINANCES

TRANSCRIPT OF EVIDENCE

(Taken at Canberra)

THURSDAY, 21 SEPTEMBER 1967

Present:

Senator Wood (Chairman)

Senator Bishop

Senator Devitt

Senator Cavanagh

Senator Lawrie

Senator Davidson

Senator Wright

MR JAMES ANDREW COSTELLO, Director (Planning) Department of the Interior, and

MR ERIC WIGLEY, Assistant Secretary (Lands) Department of the Interior, were sworn and examined.

Chairman

We would like some further information on Ordinance No.27 of 1967. The matters about which we would like this information are related to sections 4, 5, 6 and 7. The purpose of the ordinance is to obtain control over certain lands in an area for which no plan has yet been devised. The Ordinance vests in the Minister control over subdivisions and building in the areas concerned. They are wide powers which are sought, and the Committee would like some argument from you as to why you feel these controls and powers should be granted? ---

(Mr Costello) I think the basic problem can be said to be that the expansion of Canberra in recent years has brought about an influence wider than was originally anticipated. This has been accentuated in recent times with the alteration of planning from the north to further development in the south which was not envisaged originally. The problem arises because certain areas of land on the outskirts of the Australian Capital Territory were being exposed to these influences far in excess of what was anticipated originally. We in the Department saw some development this way last year and investigations were started for the purpose of bringing in complete legislative control in the accepted sense. The purpose of the ordinance is twofold. Firstly, it is to protect the essence of Canberra as a national capital by avoiding having on the immediate outskirts of the national capital undesirable fringe development, unattractive commercial development and so on, and also to prevent the type of ribbon development that occurs in the approaches to large cities. Basically, the purpose of the ordinance

is to protect the national capital, but it also seeks to preserve the community atmosphere. The first is not a concept which is embodied in Australian town planning. Therefore, we have not been able to get guide lines on it. We have been developing ab initio. Australian town planning, so far as it has been developed to date, has been essentially on community protection and it has developed from this point only. This is one side only of our problem. We have problems connected with the protection of the national capital and then the protection of the community. The latter side of the ultimate development, the preservation of the general amenities of the areas which will be subject to development, the demand upon the community for urban servicing which could not be supplied perhaps commensurate with the development is one of many principles applied in State urban planning. These are some of the principles which would have to be taken into account with respect to the urban amenity problem and can be identified from State planning. Then, of course, there is the possibility of future land requirements for the expanding city. In this respect we have regard to the original concept of the development of the Australian Capital Territory to provide, amongst other things, sufficient water, drainage and so on for the national capital. Some of these areas which are subject to the freehold land controls are Naas and Gungahlin to the south, and at this stage these areas could be potential much needed water supply areas but current development has not proceeded to the stage where we can be specific enough. Our attention has been directed to clarifying all this with the idea of getting a specific set of proposals in the normal way and having a legislative pattern upon which these can be based. Our difficulty has been that unfortunately development has occurred more rapidly than we anticipated. This has been accentuated by the recently announced

development of the capital to the south and one of our problems here is that if this goes completely unharnessed in the intervening period a great deal of damage could be done and individuals could suffer. This was the basic reason why we felt it necessary to have some interim control.

In the same way as the States allow for interim control when a plan is being prepared or has been prepared and is being processed, the same position applies. Unfortunately we do not have the complete legislative pattern that the States have under which they bring these interim orders into play. This has been rather difficult. The purpose of the interim legislation is not so much to control but to preserve the status quo. When we examined this we took it that it could be done one of two ways. It could be a complete freeze. We thought that a period of approximately 12 months would be necessary. Then we thought if we had this complete freeze and prohibited all development for 12 months that would give the answer and the development could occur under the control system. If we brought this sort of prohibition down we could create problems with individuals; for instance, a person who had a block and wanted to build on it or a person who had a large farm and wanted to have a member of the family sublet the far portion of the allotments and use it for share farming or a farmer who wanted to build a hay shed. With these types of development we thought it would be unreasonable to completely prohibit that for 12 months. From this point of view we do not know how far these desirable elements in this go, but we did not want to prohibit them completely. This generally is the background as to why the legislation has been drawn in this pattern.

Senator Devitt

You have mentioned that the first alternative was the complete freeze. What was the other alternative?

--- The line that we have taken.

Chairman

Does it not seem rather strange that the whole of the area set out for Canberra belongs to the Commonwealth Parliament and why some classification of use of the land in association with a complete plan of the area has not been evaluated years ago? Do you not think that the Commission has been very lax in not bringing this to some fruition? The situation is that the Department is more or less trying to freeze development in the whole Canberra area. Every town plan is planned right to its very boundary. Why did not Canberra have this before? --- (Mr Wigley) Perhaps I could give a little background information on this. There are some 86 holdings of freehold land.

Senator Wright

Has anybody a plan? --- Yes, there is a plan here. It is rather large.

Would you open it out, then the whole Committee could see it. --- The land with which this ordinance is concerned is the land coloured yellow.

Senator Cavanagh

The ordinance covers the whole Territory. --- It is concerned only with freehold land. All the land except the yellow land is owned by the Commonwealth.

There is some freehold land in the village of Hall, some small allotments which are used mainly for residential purposes. There are some residential blocks in the area known as the Oaks Estate across the railway line from Queanbeyan and some down in the village of Tharwa. You can see that the Commonwealth had acquired or had passed to it from the State as Crown Land all the other land which is there, except the yellow. I have been unable to ascertain precisely why these areas were left; in other words, why all that was acquired and some pockets left as freehold. This goes back quite some years of course. Those yellow areas total some 90,000 acres, something less than one-fifth of the total area of the Territory. The area with which the National Capital Development Commission is concerned is mainly the area around the city. From our discussions with them it is quite clear that their future plans for the development of the city lie generally to the north side of the Murrumbidgee River, the land on the other side not lending itself readily to urban development.

Senator Wright

The ordinance does effect the freehold land to the south of the Murrumbidgee River? --- Yes, both sides.

Senator Bishop

Including Hall? --- Yes. There is a slight difference in the ordinance. The ordinance does make a difference between the generally rural areas and the land

in Hall. Perhaps Mr Costello might explain this. I think basically the difference is that the areas in these villages are for residential or perhaps business purposes and the sort of controls that we had in mind are really for rural areas. We would not envisage that a freehold owner in Hall, Oaks Estate or Tharwa would want to erect a shearing shed. This would not be part of a residential lease. The owner of freehold land in other areas would or could want to erect a shearing shed. In that case it was not envisaged that the Minister would prevent such a building being erected.

Senator Wright

Has he power to do so? --- I think the ordinance has excluded certain forms of buildings.

Senator Cavanagh - The definition is 'no prescribed purposes'. That is contained in Section 6 (3).

Would you tell us the interpretation of the provision? --- (Mr Costello) The provision is under Section 6. The control is exerted in respect of those small allotments which comprise Oaks Estate, Hall and Tharwa. The prescribed purposes are defined under Section 2.

The section refers to freehold land in the part of the Territory 'other than'? --- I am sorry, I am looking at the wrong section. The provision here is Section 6. It is the rural land other than Oaks Estate, Hall, and Tharwa. The provision is that in those rural areas the proper authority under the Canberra

Building Regulations is not permitted to grant a permit for the erection of a building for use as a dwelling house, hall or community centre along the lines to which the section applies, unless the Minister has approved its erection. The point is that this would enable a farmer, for example, under this to build his normal outbuildings.

You are not making it very clear to me. To which section are you referring? --- To section 6.

What does it say? Refer to the specific part of it and then explain its application? --- Sub-section (1.) restricts its application to freehold land other than the land that is within Oaks Estate, Hall and Tharwa.

What does the section say with regard to all freehold land other than in those three places? --- It purely provides that before the proper authority who controls building may issue a permit under the building regulations to enable the erection of a building for use as a dwelling house or hall or community centre, the applicant must have the approval of the Minister to erect those premises on that land.

What is the justification for that? --- The reason for it is to prevent in an underhand fashion the erection of such things as motels and so on.

But what it says here is that the building authority is prohibited from permitting a dwelling house to be erected except with the approval of the Minister. What is the justification for that? --- The justification would be that a person may apply under the building regulations for a permit to build. He may call the building a dwelling house, but in fact that building may be designed in such a way that it can be used as a boarding house or hotel.

But the building regulation already prohibits you from using it for any purpose other than that for which the permit has been given by the building authority, does it not? --- No.

I have not looked at the regulation, but if it does not I am amazed at the deficiency of it? --- It is just restricted to the control of the actual building.

We have it now firmly in our minds that you are asking for permission to prohibit the proper authority from

permitting the erection of a dwelling house without the Minister's approval? --- Yes.

What does (3.) say? --- While this ordinance continues in force, the proper authority shall not grant a permit under the building regulations for the erection of a building on land to which this section applies if the building is for use for a prohibited purpose.

'Prohibited purpose' is defined? --- Yes. It is defined in sub-section (2.) of section 2, paragraph (d), which reads:

A reference to the use of a building for a prescribed purpose shall be read as a reference to the use of the building as -

- (i) a hotel, picture theatre, shop, service station, factory or saw mill;
- (ii) flats or home units or other residential accommodation of a kind commonly known as a flat or home unit;
- (iii) a motel or guest house or a building, however described, for the provision of accommodation of a kind commonly provided by a motel or guesthouse;
- (iv) a restaurant or cafe or a building, however described, for the provision of services commonly provided by a restaurant or cafe; or
- (v) a stall for the display or sale of goods.

In effect, the substance of section 3 is to say that with regard to the whole of the area other than Oaks Estate, Hall and Tharwa, none of these buildings can be permitted absolutely? --- That is right.

There is a complete embargo? --- Yes.

Senator Cavanagh

What is the necessity for this? Why prohibit, say, a shop? --- This is the area outside established villages.

Senator Wright

Paragraph (d) of sub-section (2.) of section 2 refers to residential accommodation of the kind commonly known as a flat or home unit, to a restaurant or cafe and to a stall for the display of goods. You say that you have not got anything analagous to State town planning legislation

in operation in the Territory? --- That is so.

The Chairman has referred to the time factor. I wanted to ask you why you could not frame the ordinary town planning legislation in the form of an ordinance with the same facility as you frame this. Why could you not adopt the principles of town planning from the State legislation and apply them by ordinance as such? I am referring now to what appear to me to be arbitrary powers that you seek? --- The answer to that is that if we had to be concerned only with community interests that is all we would need to do, but we have the other problem that we are also trying to preserve the national capital.

Take the area at Rendezvous Creek, which is part of the area subject to this regulation. What is the interest of the national capital that prevents you from having a cafe or stall in that area? --- At this point of time we are still working this out. We know that some of this immediate planned development is working into this area within the next 15 years. We know that the immediate water supply for the city from the Cotter area will not be sufficient to cater for the city's development within another given number of years. We also know that we are going to have to rely a great deal on water supply from the eastern water shed of the Tidbinbilla range.

But, surely, in so far as you foresee water supply, the thing to do is to acquire the land that will be the source of your water supply. That is not a subject of town planning as a rule? --- This is one of the problems. Until such time as our research is specific and our investigations indicate just what we do need, complete acquisition itself would be unreasonable. A couple of recent newspaper reports of one of these sub-divisions which have recently been processed indicates a degree of uncertainty, yet, in all fairness to purchasers, they must be made aware of it.

These are in the areas that we are discussing?

-- That is right. I have the plan of the particular subdivision here which is affected by this:

We dealt with Section 6, to take a specific example, and we saw that it related to dwelling houses. Then as to buildings for prescribed purposes it includes home units, flats and cafes. You test the reasonableness by its application to the land on the other side of the Murrumbidgee River. How can it possibly be suggested that the Minister should have the power to approve of every dwelling house proposed to be erected there, big or small? --- (Mr Wigley) The Tidbinbilla Fauna Reserve is in the area. There was some similar land which was required by the Commonwealth last year. It was in mind to acquire it as it was necessary to include it in the reserve. It is part of the valley. For the natural topography features it was necessary to acquire this. While the department was considering the need for this one of the land holders, who had some property at the then entrance to the reserve, was proposing to erect a motel, caravan park and kiosk. Word of this got around the place and the department was subjected to quite a deal of criticism from people who were afraid that this development was going to spoil this.

The Department has had 40 years to zone the area. It should have determined for everybody just what use could be made of the land in a particular zone.

Senator Bishop

Where are the sub-divisions concerned? --- These were done before the ordinance was drawn up and the particular sub-division to which I am referring had already been lodged with the Titles Office. In fact, it has been advertised for sale.

The point with which the Committee is concerned is that the Minister or an official in the Department should say that Y can build a motel on black acre but X is prohibited from building one on white acre. It is the method by which you are achieving the restriction? ---

I would like to go back again to mention that over the years no insuperable problem arose because of the Commonwealth's lack of control of this nature such as exists in all the States. The land is being used mainly for grazing and agricultural purposes. There was an occasional subdivision but the public generally were not concerned. Indeed some of the local solicitors came to the Department and asked for approval for their subdivisions. I think their basis for this line was the Real Property Ordinance where there is the requirement that the Registrar has to satisfy himself that a survey has been carried out and plans drawn to certain technical

requirements. It has been the custom over the years that the Territory has been a territory that applications of this kind have been fairly rare and on infrequent occasions only have these people come to the Department with their plans or that the surveyors have brought their plans to be certified or that the surveyors have been before the Registrar of Titles who had to be satisfied sufficiently to register any dwellings on the land. As I say, these were very rare occasions.

For 40 years it has been common State legislation to say that nobody shall subdivide and the Registrar of Titles shall not register a plan of subdivision unless it is approved in accordance with a plan by the local authority. Why has that not happened here? --- (Mr Costello) I would like to refer back to the map again in respect of the situation in Canberra going back, let us say, 40 years. It was never envisaged that Canberra would extend beyond certain boundaries. The Commonwealth owned all the land within those boundaries. The end result from the Commonwealth's point of view was that it should not have any interference with what might be done there or it should not have undue interference.

You are referring to Lanyon? --- Yes. The situation is that in the post-war period the previously unforeseen rapid expansion of Canberra did place some strain

on the area. The planning which had developed particularly in the period since 1958, when the Commission was established, was a part from this development to the south of the established Canberra area; that is the Woden area. The planning was for Belconnen, Majura and Gungahlin. I draw attention to the fact that it was within this total area which was acquired by the Commonwealth; this area north of the Murrumbidgee. It was always envisaged that the city would lie within that. The problem has been that the development of Woden and the commencement of Belconnen has meant further planning and investigation had to be done by the Commission. They found that some of the areas which had been planned were unsuitable.

Senator Davidson

Why unsuitable? --- Numerous reasons; some topography, some in respect of previous land use. For example, I refer to the Majura firing range where there could be numerous unexploded shells and heaven knows what. Other reasons could have been the general pattern of the established services such as sewerage. For example, Belconnen necessitates a complete sewerage system of its own but has an outlet. Majura would have had to have its own system, but it does not have the access out. The emphasis then changed

over to the other area at reasonably short notice and a need arose to ensure that no problem arose from this. Senator Wright raised the question of the need to control an area down towards the south.

What is that area? --- One of the small areas down towards the south, in respect of a house as distinct from a commercial development. The essential point here is that what we are striving to achieve in this interim period of only 12 months is to ensure that the person who wanted to build his own house or farm buildings would not be hindered. He would not present any problem to anyone else in the years to come, whether to us by acquisition or neighbours.

The Minister has to give approval? --- Yes.

The Minister may not approve? --- He may not.

Senator Wright

He may approve for one but refuse for another for reasons that are not specified in the regulations? --- This I concede. One of our problems has been to be able to identify and spell out in full the guide lines because we are still investigating and developing the principles.

Senator Cavanagh

Is it not an offence to use the land in the 12 months period? --- There is no offence in respect of use

of the land itself.

Senator Bishop

Under Section 6 (3.) you tie up prescribed buildings. The point is that you deny people certain things but in respect of a dwelling the Minister can refuse for no reason. No guide line or criterion is established under which a person knows whether he is entitled to build or not. That is the sort of thing that is worrying us? --- (Mr. Wigley) This is merely an interim ordinance. We have talked about 12 months. It came into effect on 27th July, I think. The ordinance says that it will cease to operate as from 30th June next year. We hope by that time, which we hope is before that time, we will be able to introduce permanent legislation which will give guide lines and will provide the grounds for objections or appeal and that sort of thing. In the meantime we have some subdivisions which are shown on this further plan which might help you to appreciate our problem that we see here. It might also indicate that the Minister's approval - it was not intended that the Minister's approval would be withheld in any unreasonable way. We felt that if there happened to be a case where the Minister felt his approval should be withheld this could happen, as you will appreciate. Without any control over subdivision we could, for instance, have a block of land which may be very narrow and very long, going back from a road to a river.

In the Yarrowlunla Shire outside the Territory boundary, the interim order says that the minimum size block shall be 50 acres, but these interim development orders of New South Wales go on to talk about frontage and depth. You could have 50 acres and it would be very long and narrow or a very irregular shape, which would certainly not be in the public interest.

Senator Wright

What is the relevance of that to this? --- If a sub-division of that nature were put before the Minister here, thought would be given to withholding approval. Having in mind that the 30th June next year is not very far away, and remembering that we hope that permanent legislation, guide lines and so on will be available by then, perhaps the worst that could happen to the individual would be that he would be delayed a little in implementing his sub-division and he will have a chance of appealing when the permanent legislation came into force.

But the usual experience in the States is that it takes 3 or 4 years to get a town plan. Although you have set down next year, in my view that is completely unrealistic and you will be coming to us to extend it for 3 years after that, and another 7 after that? --- Could I point out with respect that the legislation in the States is of a rather more complex nature than we anticipate. Also, it is only a relatively small area that is involved here. There are not a great number of land holdings involved, and the variety of uses is not very great.

Is there any specific project that you have in mind that is going to create a difficulty and that you mean to stop by this regulation? --- No, there is nothing that we know of at the moment.

There is no actual case that evidences a need for this interim restriction? --- Not at this moment.

Senator Bishop

What about the sub-divisions that have been sold? --- (Mr Costello) Those have been allowed - they exist. In fact, two of them were in process of examination but we made no attempt to prevent them because they had already been done.

Senator Devitt

The thing that passes through my mind is what is the urgency for bringing down an ordinance of this kind when apparently work is now going on in the preparation of permanent legislation which will be brought into being in June or thereabouts of next year. The answer to Senator Wright was that there was nothing at the moment which seems to require an ordinance of this kind to be brought down now. Is there some thought in the minds of the planners that things will go awry between now and the time when the permanent legislation can be brought down? --- (Mr Wigley) A little while ago Mr Costello mentioned the negotiations which are current. The Commission is investigating a number of possible sources within the Territory of Canberra's future water supply. The Naas valley happens to be one of these sources. The Commission feels that this area will be needed for water supply purposes, but it cannot say when or just precisely what part. One sub-division which has been receiving a certain amount of publicity in the Press here is one in which the blocks happen to be rather narrow and long and in which there are a number of entrances onto a quite important road that links Canberra directly to Adaminaby. It is a sub-division in the parish of Cuppacumbalong, in the district of Tennent.

Senator Davidson

Is it a main arterial road? --- No, but the Adaminaby people like to use it as it is a much shorter road. It is only 70 miles to Adaminaby from here over that road.

Senator Wright

The sub-divisional blocks average about 20 acres each?
--- Yes.

Chairman

You would not call that a conglomeration? --- No, but they might construct a motel there.

Senator Wright

What area do you call that? --- The Naas valley. It is in the parish of Cuppacumbalong. As a matter of fact, there have been other sub-divisions in the area. There are about eight or nine blocks which would be of an average area of 40 acres each.

Is there any legislation in the Territory which regulates the creation of sub-divisions? --- (Mr Costello) Only the real property ordinance with respect to registration.

I would like to know what is in it? --- The provision is the normal one with respect to Torrens title requiring the lodgment of plans of sub-divisions with the Registrar of Titles before the issue of titles to the sub-divided property. It empowers the Registrar to require the certificate of the Surveyor-General that the survey has been properly carried out.

Does it say anything about minimum size? --- It lays down no standards at all.

You mean that this area has gone on registration without regulating the sub-division of land with relation to use, size and so on? --- Yes. We have no immediate sub-divisions that we know of coming up, but we do receive sub-divisions like this. As a matter of fact, we had

received sub-divisions such as this one in Cuppacumbalong within the preceding 12 months which indicated that in the absence of control something was going to go. If we had to wait until we had finished our final legislation, things would have gone too far. We had to arrest the situation.

Senator Lawrie

What are these 20 acre blocks to be used for? ---
(Mr Wigley) They have been advertised as suitable for fishing lodges and so on. I do not think any one of them could be regarded as a living area unless the living that was obtained from the land was in the nature of a business such as a motel, service station and so on. It is quite conceivable that a number of these blocks could be used for the purpose of motels, service stations, hot dog stands and so on, if we had no control. That could spoil the effect of the road which is quite a scenic road.

That is why you zone an area and why you have rules for sub-divisions. One rule applies to motels, another to hotels and so on. How can the Minister be a judge as to whether a cafe or motel should go on any particular block there and, having permitted one on Smith's block, refuse it on Brown's block? --- I take the point.

The fact is that we were really aiming to hold the situation until we got our guide lines and rules straight.

Perhaps the emergence of this plan qualifies your previous answer and you are putting forward the subdivision to show what you are attempting to block by the regulation? --- No. We have advised these people that the subdivision was not covered by the ordinance, except that in the buildings they have asked us - under the ordinance they have sought approval for the buildings to be erected thereon as dwellings. The answer that they will be given will be that the Minister will approve the buildings as dwellings. There is no intention to withhold any of these.

Chairman

Can you say that a motel is not a dwelling? ---
(Mr. Costello) That is the reason why we had to have that reservation power in respect of Section 6 (2.). We wanted to prohibit the development of the commercial facility there, which we have sought to do under Section 6 (3.), the prescribed purposes, and to ensure that a place was not overtly constructed as a guest house. These things have to be watched carefully.

Why cannot these things be made the automatic decision of some authority other than the Minister? What

would the Minister know about it? What special qualification would he have to make a decision; not just this Minister, any Minister? ---(Mr. Wigley) The method we had in mind was that when a subdivisional proposal was put to the Department for approval we would seek the advice and comments of the National Capital Development Commission. We would be guided by their advice and comments before we advised the Minister. We would foresee in this holding period - and really what we have set out to do and tried and hoped to do was to hold the situation so that it did not deteriorate. In other words, with the knowledge that the Commission is proposing certain future water storage areas it could be that some of these land holders - and they would be entitled to at the present time - would want to capitalise on the areas that they have, subdivide them, with water frontages, and make quite a lot of money. They would certainly pay very handsomely. Keeping in mind that the water authorities may not want people on the lake shore we would probably have to keep in mind at some stage to acquire these lands and pay the owners just compensation. It is all a little uncertain at this stage. We thought that anything we could get at the present time to get for this admittedly belated legislation the guide lines, avenues

of appeal and this sort of thing - this is really what we are striving to do.

Senator Cavanagh

Under the Canberra Building Regulations has the proper authority only the power to say the types and standards of construction? --- The proper authority is actually the chief architect in the building section of the Department and is responsible for the administration of the Canberra Building Regulations.

Apparently he grants a permit? --- Yes.

On what ground can he refuse a permit? --- Subject to this ordinance he would be restrained from giving a permit if the Minister had withheld approval.

Without the ordinance now? --- He would be just constrained to deal with it under the Canberra Building Regulations.

Senator Bishop

On building standards? --- Yes.

Senator Davidson

What is his connection with the Commission? --- He belongs to the Department. Plans of buildings and so on are submitted to the proper authority, which refers them to the Commission which looks at them and has power of approval or to withhold approval as to external design

of the building or siting of the building on a block!
Most of this activity is in the city.

You said that it was proposed to consult with the Commission? --- No. It is an established routine.

Even with these? --- (Mr. Costello) Yes. The Commission has no authority outside because of the terms of its Act, but we would regard them as experts.

Senator Cavanagh

Has the Commission no authority, but generally it assists? --- That is so.

Senator Devitt

The regulations cover the whole of the Territory?
--- (Mr. Wigley) Yes. The Department is responsible for the Territory.

Chairman

What is the width of the road in the subdivision and the width of the subdivisions about which you are worried? --- This road is 100 feet wide. The frontages are about 400 to 500 feet.

Senator Lawrie

Are not the measurements given in links? --- These are in feet in the ACT.

Senator Davidson

What is the situation on the other side of that road? --- They are rather bigger blocks.

Chairman

That road is a 1½ chain road. You have blocks of land of about 8 chains. Even if you had motels along there you would not get a heavy flow of traffic that would worry you on a road that wide? I do not think there would be a great flow of traffic even with a few motels along there. Has Canberra still no classification of land usages right throughout the city? --- It has not. The town planning control here is exercised through the lease. As you know, all the land in Canberra is leased.

People break leases and somebody winks the eye, which has been going on in relation to certain accommodation. Why is there not a complete land usage plan for the whole area? As Senator Wright mentioned, other municipalities have town plans, I cannot understand why Canberra has not, --- It has been thought of. I can recall the National Development Commissioner recently prepared a scheme for the Rocks area in Sydney. He was reported in the paper as saying how well the leasehold system of control of town planning matters worked in Canberra. It has worked very well. We have had such comments made from people elsewhere and overseas too, I think, when they have examined the way in which we do it here. They

think it is very effective. It is very direct.

Senator Wright

Because you own the land and let it on terms on which you wish to let it? --- Yes.

We are considering land that is owned by other people. --- I thought the Chairman was referring to zoning in the city itself.

Chairman

Right through. --- My remarks were related to the city leases, which have a purpose.

If the whole land is zoned nobody could come and buy a lease from somebody and use it for a different purpose. When they looked at the plan they would know for what purpose the land was zoned. I cannot understand why Canberra has not had such a system. I have said this time and time again, Why does not Canberra have a plan for the whole of the area? As Senator Wright says, it goes before the people, becomes statutory law and everybody knows just where they stand. --- That is so.

The whole of the ACT area should be planned to show the urban area, city plan area, rural areas and so on so that anybody seeing it would know exactly what they could do. It does not take an over intelligent person to follow a town plan. --- That is right.

Senator Bishop

Suppose the Government or the Minister told you tomorrow that you had to carry out a zoning plan in this area. How much could you effectively do, remembering your argument about water supply and so on? --- I think we could do it effectively. In fact, it is a zoning plan that we have in mind so far as this is concerned because this is freehold land and we have no leasehold contracts through which we can enforce our zoning intentions.

Senator Devitt

Is it mandatory at the moment for all sub-divisional plans throughout the whole area to be submitted to some authority for approval? --- Only for certain technical aspects, as to the plans which are set out in the real property ordinance which says that the plans shall be drawn to a certain scale.

Senator Lawrie

We have discussed at great length land other than what is contained in the three villages which you mentioned earlier. What is the reason for requiring restrictions in the three villages? There is a good bit of land outside the villages? --- (Mr Costello) It is a matter of degree. As I said before, a farmer in a rural area could build, for example, a workshop of fairly large proportions on his property and still not impair the primary use of the land, which is agricultural or pastoral purposes. On the other hand, the same type of activity in a built up area of one of the villages could in fact change the primary purpose of a sub-divided block from residential to industrial.

This applies to places already erected and the use to which they can be put? --- Yes. We are seeking to ensure that if someone has a house already there and is using it as a house he cannot use it as a factory or a hotel or a guesthouse before we bring down permanent control. The

basic purpose is to preserve the amenity of the three villages as they are at present.

Senator Cavanagh

Do not sections 8, ~~and section 9(2.)~~(a) and (b) conflict with sub-sections(3)of section 3? One says that the ordinance shall not apply to buildings that were used for certain purposes and the other says that it is an offence to use them for those purposes? --- Sub-section (3.) permits of the continued use of the land or building for the purpose for which it was used before the ordinance came in.

And section 8 takes away that permission? --- If it does, it was not intended to.

Section 9(2.)(a) and (b) also takes away that permission? --- I suggest that the words 'this ordinance' in section 3 were used advisedly by the draftsman to ensure that sections such as 8 and 9 did not apply. That was our instruction to him, and that is the way I interpreted the ordinance when I received it. We wanted to ensure that they could continue to use them. (Mr Wigley) It was not intended to disadvantage anybody. We tried to maintain the status quo.

Senator Bishop

Section 10(2.) is drafted in such a way...as to be quite open. Could not a more specific form be prescribed? --- (Mr Costello) I think you will find that in all Commonwealth drafting to date this is the practice. They do not prescribe forms any more than is required in trying to get a fluid situation of giving power to the Minister.

Senator Devitt

When the new regulations which are now in course of preparation are completed, would it not be desirable concurrently with them, to prepare a fully zoned plan?

--- Yes, but in the meantime we want to prevent

deterioration because it does seem rather remarkable that these sub-divisions have come along with a great rush in the 12 months or so prior to this. It is very rarely that we had sub-divisions of this type prior to that and we were a bit fearful that in the period between now and when we get effective permanent legislation there would be further deterioration that would certainly not be in the public interest and a lot of people could perhaps suffer thereby.

Senator Wright

Could you tell us the nature of your experience and duties in this respect? --- I am Director of Planning in the Department of the Interior. That is policy planning. I have the legislative section, special projects and other groups under me. I have been in the Department of the Interior for 11 years and associated with this work during the whole of my time - that is, the work of preparation of legislation and policy.

(Mr Wigley) Originally I worked for a private firm in Queensland as surveyor's draftsman back in 1936. I have been in this Department for some 20 odd years. For the last 3 years I have been Assistant Secretary of the Lands Branch of the Department.

Chairman

Is there anything further that you would like to say? --- (Mr Costello) What I would like to mention is that going back to what I indicated at the opening, we originally felt we had to choose between two alternatives. One was to prohibit completely in order to freeze. The other one was to prohibit to allow some form of alleviation. I realise the fears of members of the Committee in respect of the arbitrary use of unfettered discretion. The Minister has indicated that if the Committee really feels that the degree to which discretionary power is incorporated in the ordinance is really objectionable he is quite happy to make some alteration. The only problem that arises is what such alterations may be. This is the reason why it was put in this form. We do not like complete prohibition, but if we had to we would. The form of control that there might be in respect of the exercise of discretion, perhaps tabling in the House would be - perhaps there would be ways and means of overcoming the problem that way if the Committee so desired. We have considered the question of oversight by courts. The problem is that we have no special criteria because we

are still working them out. The courts would not have a set of criteria by which to judge the decisions from a point of law. Hence any question of oversight by a court would be one of reasonableness only. As far as we can see it is not a satisfactory proposition from the point of view of the affected applicant. The Department's advice to the Minister was on the basis that with the watering down of the discretionary authority to what we thought was the minimum, by specifying those prescribed purposes which we thought were completely objectionable and prohibiting them absolutely, the ordinance would have a very limited life and, stated on its surface, would perhaps lessen the problem to the point where it would have no real objectionable application. In relation to this point of view we would hope to guide the Committee in its consideration of the problems.

Senator Bishop

Rather than have a lot of prescribed conditions or standards would it not be better to apply them to certain areas? You would be less likely to make a mistake. I take it, from what you have said, that there are some areas where you are satisfied that certain types of building would not be possible, etc. Would it not be fairer in an interim period to apply conditions to certain areas rather than impose prohibitions which will only last for some months? --- I think the answer to that point is that we still have a fair bit of work to do to finalise these. The two points that rather concerned us

were, firstly, in the final analysis we might have to reconsider some of our earlier analyses where certain things were found impracticable and we would have to go over what we thought was really essential. If we had to go over old ground 8 or 9 months later and make certain prohibitions, that would be objectionable. Secondly, there was the problem that we thought that the specification in it in this way could well work an unfair burden at this point of time when it could not categorically be stated in full that it was desirable for these reasons because we are still establishing our criteria. We thought it could work an unfair burden on neighbouring areas.

Senator Wright

To consider some application to an expert such as a town planner, with the right of appearance and appeal, and then anybody who is subject to restriction being compensated, will be getting nearer to the ordinary ideas that the community has as to individual rights? --- These are some of the principles we are working on in our permanent legislation. (Mr Wigley) I would add that we have been working in close co-operation with the National Capital Development Commission on a land use plan for the Territory. We have progressed. It is now precise.

Chairman - Thank you, gentlemen, for your attendance.

The witnesses withdrew.

The Committee adjourned.