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JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

Reference: Draft amendment 39 National Capital Plan

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JOINT COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

Friday, 21 June 2002

Members: Senator Lightfoot *(Chair)*, Senators Colbeck, Greig, Lundy and West and Ms Ellis, Mr Johnson, Mr Neville, Mr Snowdon and Mr Cameron Thompson

Senators and members in attendance: Senators Colbeck, Lightfoot, Lundy and West and Ms Ellis, Mr Johnson, Mr Neville and Mr Cameron Thompson

Terms of reference for the inquiry:

To inquire into and report on:

Draft amendment 39 National Capital Plan

WITNESSES

Committee met at 9.01 a.m.

CHAIRMAN—I declare open this public hearing of the Joint Standing Committee on the National Capital and External Territories inquiry into draft amendment 39 of the National Capital Plan. The inquiry was referred to the committee by the Minister for Regional Services, Territories and Local Government, the Hon. Wilson Tuckey MP, on 16 May 2002. The purpose of this inquiry is to examine the merits of the revised draft amendment 39 of the National Capital Plan, relating to the Deakin-Forrest residential area. Canberra's role as Australia's national capital is of continuing and paramount importance. The heart of the national capital is the parliamentary zone and its setting. The proximity of the Deakin-Forrest residential area to Parliament House gives it national significance. The committee has a duty to ensure that development in the area reflects the national significance of the area.

At the conclusion of the inquiry, the committee will table its findings, conclusions and recommendations in the parliament in a report which will be publicly available. The committee normally authorises submissions for publication, and they will be placed on the committee's web site. Some copies are also available here today from the secretariat staff. To date, the committee has received 13 submissions from interested parties. If you would like further details about the inquiry, please ask any of the secretariat staff present at the hearing today for assistance. I note that there is a change to the advertised program: Mr Rohan Dickson, Director of the Civitas Partnership, is unable to attend. The hearing is now scheduled to adjourn at 1.15 p.m. as a result.

Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

[9.04 a.m.]

CALNAN, Mr Garrick James, Manager, Territory Plan Coordination, ACT Planning and Land Management

CHAIRMAN—Welcome, Mr Calnan. The committee has not received a submission from the ACT government. Do you now wish to lodge a submission?

Mr Calnan—I have a submission and I am happy to table it. I was going to present the submission to the committee and then table it, but I can table it beforehand if you so wish.

CHAIRMAN—Is it the wish of the committee that the submission presented to the committee by Mr Calnan be tabled? There being no objection, it is so ordered. Is it also the wish of the committee that the report be authorised for publication? There being no objection, it is so ordered. The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera and the committee will consider your particular request. Before I ask you some questions, Mr Calnan, do you wish to make an opening statement?

Mr Calnan—Thank you, Chair. The ACT government has been involved in discussions with the National Capital Authority about this particular area for some time now with a view to achieving a mutually acceptable outcome with regard to draft amendment 39 of the National Capital Plan. However, the amendment as recently referred to us is somewhat different from the document that was originally released for public comment and for which we had expressed some support. We now have some reservations about the latest version of draft amendment 39, which is before this committee.

Originally, draft amendment 39 proposed to remove the designated area status from this particular area in Forrest-Deakin. This was a proposal that the ACT government and ACT Planning and Land Management supported. The reasons we supported that proposal go back to the legislative arrangements under which we all work. The Australian Capital Territory (Planning and Land Management) Act, which is the act that sets up the National Capital Authority and the requirement to prepare a National Capital Plan, also sets up land administration arrangements for land within the Territory. It classifies land as either national land or Territory land. In the vicinity of this site in Deakin and Forrest, the land that has been declared as national land includes the site of this building—Parliament House—and all the national institutions in the parliamentary triangle. It also includes the diplomatic areas in Yarralumla and it in fact includes a number of diplomatic sites that lie within this precinct.

However, all of the other land within this precinct is not national land. Therefore, under the planning and land management act, it is Territory land. When the National Capital Plan declares land as a designated area under the National Capital Plan, and where that designation applies to Territory land, it creates a number of administrative

difficulties and complexities that result from the overlapping of responsibilities. The Territory has responsibility for administering the land and the leasehold, but where land is declared a designated area the detailed planning policy arrangements are the responsibility of the National Capital Authority. Any works approvals, importantly, are the responsibility of the National Capital Authority.

I checked the recent census the other day and there are about 121,000 residential dwellings in the ACT. In this particular area there are 86 dwellings. Because of the circumstances I described before, these 86 dwellings are subject to different legislative and procedural requirements than the other 121,000 dwellings throughout the Territory. Those 121,000 dwellings are subject to the policies in the Territory Plan and they are subject to the procedures as set out in the ACT Land (Planning and Environment) Act. This act sets out the detailed arrangements for the making of applications and the granting of leases; it sets out procedures in relation to decision making on development applications; and it provides for review of decisions on development applications by the Administrative Appeals Tribunal. It also sets up a body known as the Commissioner for Land and Planning, which deals with development applications that have been contentious or where there has been some objection to those particular development applications. That body stands somewhat at arms-length from government and makes an independent decision in relation to these proposals.

CHAIRMAN—At arms-length from the ACT government?

Mr Calnan—That is right. As I was saying, these 86 blocks in this precinct are subject to those same procedures. In terms of any variation to any lease that might occur within these areas, that lease variation would have to go through that process. It would be subject to the lodgment of a development application for the variation to the lease and to the notification requirements under the Territory's legislation. If there were an objection to the proposal, it would be referred to the Commissioner for Land and Planning for decision. If there were no objection, the decision would be made by Planning and Land Management under delegation from the minister. That is in relation to the leasing aspect of it. If it involves any works, the works would have to be referred to the National Capital Authority for works approval.

The lessees of these 86 dwellings, as I said, are subject to the complexities of having to deal with two separate jurisdictions that the other 121,000 residents throughout the Territory do not have to go through. We believe that is really inappropriate. We fully acknowledge that, because of the location of this site, there is a strong argument that there are issues of national significance to do with this site. We are prepared to work with the National Capital Authority to establish a development control regime to achieve the outcomes that both the National Capital Authority and the Commonwealth seek to achieve in this area. We thought that is what we were working towards.

The original proposal that was released for public comment was supported by the Territory. There were subsequent revisions to that following public consultation which were perhaps a bit more restrictive in terms of what was permissible on the site. It was still proposed to remove the designated area status and we supported those revisions.

We acknowledge that it is the National Capital Authority's and the Commonwealth's right to identify what is the appropriate planning outcome for this area. However, we believe that it can be achieved without the area being a designated area. We believe that, through the inclusion in the National Capital Plan of either special requirements or specific policies that set out the outcome in terms of development controls that it requires for this site, those provisions can be reflected in the Territory Plan. In fact, they are required to be reflected in the Territory Plan because the Planning and Land Management Act says that the Territory Plan shall not be inconsistent with the National Capital Plan.

We would propose, as soon as there is some resolution of this issue, assuming that the land was to cease being a designated area, preparation of a draft variation to the Territory Plan for public release. It would reflect any provisions that were included in the National Capital Plan relating to the outcome that was sought in this particular area. We had originally suggested that it seemed logical to us that this area be subject to the same special requirements that apply to the other main avenues. I refer to page 25 of the National Capital Plan headed 'Main Avenues and Approach Routes'. Under the subheading 'Main Avenues', State Circle is listed. On page 27, under the heading 'Special requirements for main avenues', State Circle is not listed, in our understanding, as it is currently a designated area and special requirements do not apply to designated areas. Special requirements only apply outside designated areas.

The other main avenues to which these special policy requirements apply are Adelaide Avenue, which is up the road from State Circle just past the Prime Minister's Lodge, and Canberra Avenue between Hume Circle and the central national area, which is just around the corner. The special requirements are as follows:

Development is to conform to Development Control Plans (agreed by the Authority) which seeks to secure the integrity of the Main Avenues as approaches to the Parliamentary Zone and ensure that the setting, buildings and purposes of development enhance that function. In particular, the Development Control Plans will be required to:

(i) make provision for national uses, offices for national associations, tourist accommodation and residential development.

(ii) seek high standards of building design and finish. External materials should be predominantly light in tone …

The important one is paragraph (iii):

(iii) incorporate the following where Main Avenues are the final approaches to the Parliamentary Zone:

- building height controls to ensure that buildings are at least 3 storeys in height. The controls may limit buildings to 3 storeys in height or allow a maximum of 4 storeys. Plantrooms to be additional to these heights

- building lines to be 10 metres. The area in front of the building line is to be landscaped, and exclusive of parking. Minor encroachment of basement parking into this area may be considered …

I will not go on. That gives you a flavour of the current special requirements relating to the main avenues in the National Capital Plan. It seemed logical to us that, if the designated area status was to be removed from State Circle, similar requirements would apply. That was our original proposition to the National Capital Authority.

Mr NEVILLE—Do you mean a residential equivalent of that?

Mr Calnan—That is right. These special requirements apply to areas in Canberra Avenue and Adelaide Avenue that are currently residential areas under the Territory Plan. That was our original proposition. As I said earlier, we acknowledge the right and the responsibility that the National Capital Authority has to determine the planning outcome. We are not pushing that that has to be the ultimate outcome; we are just suggesting that there seemed to be some logic in applying the same rules, that apply just up the road, to this particular area.

Both PALM and the ACT government accepted the proposed revisions of April last year to restrict building heights to two storeys. We indicated that we accepted those changes but that was on the understanding that the designated area status was to be removed. As I said, the proposal not to remove the designated area status is not supported by the ACT government. The reason we are concerned about the ongoing application of designated area status to Territory land is the additional complications that it introduces into the development approval process. There have been a number of celebrated cases where land has either been a designated area, or it has been abutted and a designated area, which has introduced significant complications into the process. As an example, a new mixed-use residential building was built in Civic on the corner of City Walk and Ainslie Avenue—Ainslie Avenue being a designated area and City Walk not being a designated area. It had an awning that went around the corner of the building. They had to get approval from the Territory government and ACT Planning and Land Management for that part of the awning that overhung City Walk and they had to get approval from the National Capital Authority for that part of the awning that overhung Ainslie Avenue.

These complexities arise where the two systems overlap. In areas where designated areas apply to national land, there is very little overlapping of responsibilities and the systems work quite well together. Where the Territory is responsible for land that is not designated, our systems work. I know there is always controversy in planning issues, but we can work quite appropriately there. We are quite happy to work within the overall policy framework that is set to protect the national significance. We would like to see the National Capital Authority, through the National Capital Plan, identify the outcome it is seeking in this particular area. We would propose to reflect that in the development controls that were included in the Territory Plan and then administer them because the land is Territory land and is privately leased by Territory citizens.

Senator LUNDY—In terms of the original draft amendment which proposed to uplift the area from being designated land to come, for works approval purposes, under Territory control, what is your understanding of the reason why that amendment has now been changed to proposing not to uplift the land? What formal contact have you have with the NCA regarding that change?

Mr Calnan—We only recently became aware that there was a revision to this amendment.

Senator LUNDY—So they did not consult with you in advance on changing the proposal?

Mr Calnan—There was certainly consultation last year about revisions to the original proposal.

Senator LUNDY—But not in relation to not uplifting it?

Mr Calnan—That is right. I understand that it was because this committee had become involved. It was a recommendation of this committee and they felt that they had to deal with it through the committee process, but I might be wrong there.

Senator LUNDY—Regarding the issue of consistent treatment, particularly regarding the blocks facing State Circle, you cited the National Capital Plan. Would it be possible for you to table the excerpt from the National Capital Plan and those descriptions?

Mr Calnan—Yes.

Senator LUNDY—In any reading of the plan, is it a reasonable interpretation to think that the characteristics outlined for roads leading to the parliamentary triangle—the same description that you read out—would apply?

Mr Calnan—I think that is a reasonable assumption to make. The document from which I read was quite explicit about which main avenues it applied to. As I said, in the general description of main avenues it includes State Circle, but it does not include it in the description of the avenues to which the special requirements apply. There is some logic there in that, because State Circle is designated, special requirements only apply where land is outside a designated area.

Senator LUNDY—I do not know if you are aware of this—and I can certainly ask the NCA this question—but are there any areas within designated areas that have special conditions attached to them?

Mr Calnan—I believe that that is fairly standard practice: whenever the NCA were considering a development proposal for land within a designated area they would prepare special conditions applying to that particular site.

Senator LUNDY—So they would do it on a site by site basis?

Mr Calnan—They would do it on a site by site basis. And there are certainly general controls within the National Capital Plan applying to designated areas. The planning and land management act requires the National Capital Plan to identify the 'detailed policies and requirements'—I think they are the right words—for development of land within designated areas. That is really what designated areas are. It is not just that they have responsibility for works approval, they have responsibility for the detailed policy. They have responsibility for establishing the controls that will apply to any development within designated areas.

Senator LUNDY—I want to clarify this point. Where you have a designated area that is Territory land—as with this particular residential design—the complexities for citizens who are lessees, grow significantly.

Mr Calnan—There are complexities and there are also equity issues. If you live on one side of National Circuit you have one set of rules applying to you; if you live the other side, you have another set of rules and another set of procedural requirements applying to you.

Senator LUNDY—Can you explain to the committee what those complexities would be like for someone seeking works approval—seeking to do some work on one of those sites?

Mr Calnan—If you lived one side of National Circuit and you were seeking works approval you would have to go to PALM and lodge a development application. Whether it was notifiable under Territory legislation would depend on the nature of that development. If it were notifiable it would then have to be notified and a decision would have to be made in the ACT jurisdiction. In most single residential development cases, that would be done within PALM under delegation from the minister. If you were an applicant and the decision was to refuse the application you would have a right of appeal to the AAT.

If you lived on the other side of National Circuit in this precinct you would go to the NCA with your application and seek works approval. My understanding is that there is no formal requirement under the Planning and Land Management Act for those applications to be notified. There may be some procedural administrative arrangements that involve consultation with neighbours but I do not think that is a statutory requirement. I do not think there is any right of appeal against the decision of the National Capital Authority in relation to those decisions. So there are different rights. That applies if it just involves physical works on the land; it gets more complicated when it involves changes to the lease. If somebody wanted to amalgamate a lease or if it were a dual occupancy proposal—

Senator LUNDY—I was going to ask you specifically about dual occupancy.

Mr Calnan—it would depend on the terms of the lease, whether the lease specified that it was for residential purposes only and whether it specified a maximum number of dwellings. If the lease were for residential purposes with no more than a single dwelling then the Territory could not approve a dual occupancy without varying the lease to allow for the second dwelling. So if that were the situation then as well as getting works approval from the NCA you would have to go through a development application process to get your lease varied by the Territory. The lease variation application would be appealable and notifiable and third parties would have a right of appeal, as well.

Senator LUNDY—Sorry to interrupt, but I would like to ask a question. The process you have just described relates to dual occupancy in the designated area at the moment. Can you tell me how that would differ with the current processes for getting

a dual occupancy approved and what the changes would be if draft amendment 200 under the Territory Plan goes ahead?

Mr Calnan—It depends on how this area is classified under the Territory Plan. I have copies of Draft Territory Plan Variation No. 200 for the committee if you would like me to table it. I have brought a number of copies as well as a brochure which includes a statement from the minister about the draft variation.

Senator LUNDY—Perhaps a way of doing it with some clarity would be to describe how a dual occupancy on the other side of National Circuit—that is, in Territory land—and under PALM control would work currently so that we can look at a comparison between the current rules for dual occupancies and the current scenario with the State Circle precinct.

CHAIRMAN—Before we proceed, I just have a formality here with respect to the exhibits and the papers that we have tabled. Is it the wish of the committee that the documents—the ones we have received previously and the ones that Mr Calnan has just asked be tabled, through Senator Lundy—be tabled as exhibits? There being no objection, it is so ordered.

Mr Calnan—I have to differentiate between what the current situation is and what the situation would be if DTPV200 goes ahead. There are a number of assumptions that I need to make in order to be able to answer your question.

Senator LUNDY—Yes, I appreciate that.

Mr Calnan—If we take, for example, a block on the southern side of National Circuit—

Senator LUNDY—Territory land and PALM land.

Mr Calnan—Territory land is not a designated area; however, those areas are listed on the Heritage Places Register. Those blocks to the south of the National Circuit are identified as being of heritage significance. Under the current Territory Plan there is no prohibition on amalgamation of blocks or subdivision of blocks for dual occupancy and so that sort of proposal can be considered. That is qualified by some recent changes where a five per cent rule was introduced through a draft variation to the Territory Plan that was released last year. I am not sure whether the committee is familiar with that. It would take some time to explain all of the particulars.

Just putting that aside, under certain circumstances it is possible to have dual occupancy in those areas. If somebody put forward an application for a dual occupancy in those areas, they would do that as an integrated development application. Again, it depends on the particular nature of the lease as to whether the lease needs to be varied or not. But if we assume that the lease did need to be varied then they would put in an application. It would first be notified—there is a statutory requirement to notify the application. Any comments would be considered. There would be an assessment of the application. If there were objections, a recommendation would be made to the Commissioner for Land and Planning who

would then make the decision about whether to approve the application. If the application was approved and it was not appealed against, then the proponent could go ahead and develop the site for those purposes.

The assessment that I referred to would need to be done in the context of the policies that exist in the Territory Plan. As I mentioned, in this case those policies would include the five per cent rule, which was introduced in draft variation 192, and it would also include the special requirements that apply to this area under the Heritage Places Register. If draft variation 200 comes into effect, it would identify certain areas known as 'suburban' areas. The area to the south of National Circuit would be classed as a suburban area under draft variation 200. In suburban areas it is proposed to not allow separate titling of dual occupancies. It is not proposed to prohibit dual occupancy, but it is proposed that separate unit titling would not be permitted in the future.

Senator LUNDY—But it is permitted currently?

Mr Calnan—Yes. Whether or not that policy would apply to State Circle would depend on what outcome the National Capital Authority sought for that and whether or it stayed a designated area. If it stays a designated area then DTPV200 will not apply. If the designated area status is uplifted then the suburban area classification will apply unless the National Capital Authority, through the policies it sets through the National Capital Plan, determines that some other approach is more appropriate.

Senator LUNDY—So they could make it a condition of an uplift that separate titles could apply?

Mr Calnan—Absolutely.

Senator LUNDY—Is it your understanding that currently separate title can apply with dual occupancies within that designated area?

Mr Calnan—My understanding is that separate titling can apply at the moment, as it can apply outside designated areas at the moment. Under DTPV200, what we have needed to do is find a balance between achieving a long-term sustainable built form for Canberra, recognising that the garden city character is a very important feature of this city and that we need to do something. Certainly, part of our government's election commitment was that it was going to do more to protect the garden city character and DTPV200 is really the response to that commitment.

Senator LUNDY—Did PALM have any role in the approval of the dual occupancy that is built on State Circle or, indeed, of the one that I understand has just been approved?

Mr Calnan—I have to say that I do not know.

Senator LUNDY—You could take it on notice, perhaps.

Mr NEVILLE—If this came under the control of the ACT, would special planning conditions be envisaged in the area as distinct from your other suburban areas?

Mr Calnan—That would depend on the National Capital Authority. If the National Capital Authority said, 'We are just uplifting the designated area status and making it an urban area,' then I think we would initially prepare a draft variation to make it a residential area. Whether we would include any specific policies relating to State Circle would be the subject of further discussions with the National Capital Authority. However, I do not believe there is much likelihood of that happening. I think that if the designated area status is uplifted then the National Capital Plan will specify some sort of policy or planning outcome that it seeks to achieve on those blocks.

Mr NEVILLE—How would you contain that within your own regime? Would you have a special section of your act that would talk about this area?

Mr Calnan—In the Territory Plan we have—

Mr NEVILLE—Let me take you up at that point. In the Territory Plan, are there areas on which you impose additional or special conditions?

Mr Calnan—Yes, there are. That is what why we—

Mr NEVILLE—You are saying that these could be negotiated with the NCA as part of the transfer of responsibility?

Mr Calnan—Exactly. The Territory Plan—and I should have brought a plan with me—categorises all the Territory that is outside the designated areas into different land use policy areas. For each land use policy area, there is a policy statement in this document that identifies the range of uses—

Mr NEVILLE—This would be a suburban area as such, would it? That is, would its general delineation be a suburban area?

Mr Calnan—If no specific policy applied to it, it would be a suburban area under the proposed arrangements in draft variation 200.

Mr NEVILLE—Then the ACT planning requirements within that regime would apply to this area?

Mr Calnan—That is right.

Mr NEVILLE—For example, one thing I have found strange is that, along the parkland adjoining the Lodge, there is no requirement that houses be single storey. I would have thought, from a security point of view, double storey properties along that street would not be desirable. If it were transferred to ACT authority, could those sorts of things be incorporated?

Mr Calnan—If those sorts of restrictions were seen as desirable in terms of protecting the national significance of this area then those sorts of requirements could be incorporated into the Territory Plan as an area-specific policy.

Ms ELLIS—I have a couple of very quick questions. I will give you this one on notice I think, because it is fairly detailed. Would you please give us a piece of paper that tells us what the impact of draft 39 would be on dual occupancy development, residential character and land use, home business, building height, the setback and landscape scenario, plot ratio and access. This is the DA39 as it is currently flagged. I also have an open question about the possibility of non-residential development on State Circle. Do you have a view about that?

Mr Calnan—My understanding is that all of those provisions are really set out in the latest proposal for draft amendment 39.

Ms ELLIS—We would be interested in PALM's view on that, though, in relation to the comparison between DA39 as it stands and the original. Are you in a position to give us a view?

Mr Calnan—We are quite happy to live with those development controls. If the NCA says a plot ratio of 0.4, we can live with that. In relation to the provisions about home businesses, if the designated area status was not to be uplifted then that would not be an issue. The only reason that the home business provisions have had to be included in draft amendment 39 is that the latest proposal is to keep it as a designated area. One of the issues that we pointed out originally with keeping it as a designated area was that the home business provisions were different: if you lived on one side of State Circle, you had certain rules applying to home businesses; if you lived on the other, you had different rules. We think those rules should be the same wherever you live in the ACT.

In response to that the NCA have said, 'We will copy the rules out of the Territory Plan and put them in the National Capital Plan for this particular area so that they will be the same.' They are not the same. They are closer than they were, but they are not the same. The reason they are not the same is that under the Territory regime we also have a type of use called 'home occupations' which have requirements such as you cannot employ somebody who is not a bona fide resident on the site, you cannot do anything that has any adverse impact—and in those sorts of circumstances we are saying that you do not have to get an approval. If you are just an accountant who works from home and you just do your business at home you do not have to get an approval to do that. But technically, under the proposals, if you are carrying out a home business you should get approval to do so.

Ms ELLIS—So that is, yet again, another variation between the two.

Mr Calnan—That used to be the case, but we recognised that this was unrealistic and not appropriate. We went through a review of the home business policies two or three years ago, and amended the Territory Plan to introduce some revised provisions. We get into problems if we start going down the path of taking bits out of the Territory Plan and putting them into the National Capital Plan: subsequently, if we do

another review of home businesses, we find that all of a sudden we are out of kilter again. That is the sort of problem we are seeking to avoid.

As I said, we are quite happy to live with the development controls identified by the National Capital Authority: building height, setbacks, plot ratio, requirements for landscaping, access requirements—we are happy for them to specify all of those to protect the national significance, and we are quite happy to incorporate those into a recommended draft variation to the Territory Plan. We are required to consult with the National Capital Authority about any draft variation to ensure that it is consistent with the National Capital Plan. We are quite happy to go down that path, and if the National Capital Authority wants to continue to make provision for dual occupancies and the separate titling of dual occupancies—or multi-unit development, for that matter—again, we can do that through the provisions in any area-specific policy.

As I mentioned, we pointed out that we thought going down that path was somewhat inconsistent with what was applying elsewhere, in the main avenues. Putting that aside, whatever the National Capital Authority proposes we are quite happy to live with. But the notion of retaining it as a designated area is a principle that we have been pushing. This is an area which is one of the most critical, in a sense, because these are the privately leased residential blocks within designated areas. There are very few others elsewhere in designated areas. We do have some other leased land in designated areas and we have some issues there. For instance, the inner hills are all Territory land, but it is all unleased nature reserve so we do not get into leasing problems for those areas. It is not a big issue there. But where it is privately leased land, or where privately leased land abuts a bit of a designated area, as in the Ainslie Avenue example that I quoted, then it does cause problems. We would like to minimise those problems and make the two systems—the National Capital Plan and the National Capital Authority—work as comfortably together as they possibly can, and we think they can. Our working relationship with the authority is very good, but we do have areas where these things overlap. It causes nightmares sometimes.

Senator COLBECK—I have a couple of questions. If you want to take them on notice, that is fine. Do you have a document that provides information on the consultation and public exposure processes involved in making changes to the Territory Plan? I will be looking for something similar from the National Capital Authority. This would enable me to make a comparison down the track, if there are to be changes, of the processes followed and the consultation involved.

Mr Calnan—I can explain it to you now and I can provide the committee with a document that outlines the processes.

CHAIRMAN—Because we are over time I wonder if you would provide the committee with that document. Could you take that on notice and perhaps give a brief explanation. Is that what you want, Senator Colbeck?

Senator COLBECK—A chart that goes through the processes would be fine. I would like to refer to the evidence you gave earlier on the main avenues approach routes. You mentioned the special requirements listed under paragraph (iii). They would seem to be quite different to that proposed by the National Capital Authority

for building controls, particularly on State Circle. My reading of that is that high-density residential development up to four storeys high plus plant rooms would be permitted but that would not be something that the NCA would want to see on State Circle.

Mr Calnan—That is our understanding as well.

Senator COLBECK—What you were saying before about using this documentation as a basis for State Circle really would not necessarily apply without any overriding conditions that might be applied to it?

Mr Calnan—We are not saying that we would apply those. What we are saying is that, when we originally raised this issue with the NCA, we pointed out that elsewhere on the main avenues and approach routes this was their policy. It seemed logical to us, if the designated area status was to be uplifted, to apply the same policy to this area. We think there is some evidence emerging that the blocks fronting State Circle are starting to suffer as a result of the traffic environment to which they are exposed. I think when they were originally developed there was nowhere near the amount of traffic there. Parliament House did not exist at that time and it was not proposed to go on the site where it is currently located. We think the notion of retaining that area as low-density single dwellings for the long term is probably not sustainable. The question is: what sort of planning framework do you put there to allow change to occur in a coordinated way? We are not saying that, if you step out of this, we will apply those rules.

Senator COLBECK—I understand what you are saying.

CHAIRMAN—I have one other question I would like you to take on notice. How does the original report into draft amendment 39 differ from the most recent one that there seems to be some controversy about?

Mr NEVILLE—Is there a simple answer?

Mr Calnan—The main issue is that it removes the uplifting of the designated area status.

CHAIRMAN—Is that simply what it is?

Mr Calnan—There are some other changes, some of which are linked to that.

Senator LUNDY—There are some design and siting changes too?

Mr Calnan—That is right.

CHAIRMAN—What I would prefer—and I am sure the committee would too, although I do not speak for them—is a comprehensive answer on where those differences are—not just the salient ones. Where there are differences, the committee would like them. Could you take that on notice. Thank you for your attendance here

today, Mr Calnan. If there are any matters on which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript of evidence to which you can make editorial corrections.

[9.56 a.m.]

MIDDLETON, Mrs Hillary Claire, President, ACT Division, Royal Australian Planning Institute

CHAIRMAN—Welcome, Mrs Middleton. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as proceedings of parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments that you would like to make to your submission?

Mrs Middleton—No, Mr Chairman.

CHAIRMAN—The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that hearings be held in camera, and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

Mrs Middleton—Yes, I would like to make a brief opening statement. The institute has prepared a submission on behalf of its ACT division members. It is a national planning institute, but, when matters relating to the national capital come up for discussion, it is left to the ACT division to form a view. Of course, that view comes from a very small membership base so an institutional wide view is probably quite difficult to achieve given the circumstances. Nonetheless, the view has been formed by professional qualified planners who are members of the planning institute.

Firstly, we would like to summarise the submission. The essential points are that we support the retention of the residential areas, shown in figure 7 of the National Capital Plan, as designated areas. We believe that this is consistent with the designation of similar areas around State Circle which are overlooked by Parliament House and have a special interface with Parliament House. This area has the special characteristics of the national capital. We concur with the designation boundary as National Circuit. In last year's proposed amendment to the National Capital Plan, we believe that the NCA made a mistake in suggesting that it be redesignated or whatever the term is. We hope they have realised this and have chosen to correct this problem.

Our particular interest is also with those properties which front State Circle. State Circle is symbolically and functionally important in the design of the central national area. Its location and circular form with its radiating avenues is one of the most recognisable elements of Griffin's plan. It has been shown on every plan since Griffin's plan of 1911. For this reason, in our submission we have taken particular interest in the development and planning opportunities and constraints for those properties which front State Circle.

We are particularly concerned that there appears to be no grand plan for State Circle. There are piecemeal plans for State Circle in terms of the development future,

such as the York Park master plan, which is part of the National Capital Plan and which relates essentially to the DFAT building and to areas beyond it. This was drafted in the late 1980s because there was a development opportunity for a comprehensive site which was to be overlooked by Parliament House and was to have a significant façade facing State Circle. Therefore, the York Park master plan determined that this was to be a prestigious building of excellent design integrity, and that is what you see today. The areas now facing State Circle which relate to this particular amendment have a similar opportunity, not in the next five years, but perhaps in the next 10 to 15. We are looking for a visionary approach to what might happen with this essential piece of Griffin's plan. We believe that a more intensive development opportunity could be afforded to those properties that front State Circle, to reinforce the geometry of State Circle and to give it a presence which is worthy of its special status.

Senator LUNDY—We heard from the previous witness that a certain description and certain criteria applied to buildings fronting main avenues or avenues leading to Parliament House. They were not particularly advocating that that treatment should be applied to this area, but can you tell me what your view is of that type of treatment being applied to this State Circle frontage?

Mrs Middleton—There are provisions in the National Capital Plan which relate generally to main avenues under the heading of 'Areas of special national concern'. I do not have the exact reference, but the content of it essentially requires that in these areas a high standard of planning and development is to be applied, they are to be developed as ceremonial and processional ways and important traffic routes, and care is to be applied in the external design to achieve dignity and harmony. They are the overriding provisions of the National Capital Plan. State Circle is a main avenue.

Senator LUNDY—I am trying to get my head around whether or not you are arguing for stricter adherence to those provisions as they are described in the National Capital Plan.

Mrs Middleton—Yes.

Senator LUNDY—Does that include a view that extends beyond having those blocks for residential and other uses, such as commercial use? Have you thought about that distinction?

Mrs Middleton—The land use is one issue. We are suggesting that the suggested development controls in this amendment for blocks fronting State Circle perhaps do not recognise that you could have a significant built form on State Circle to achieve, in a built sense and visually, the significance of State Circle by building to the edge and reinforcing the geometry of State Circle. You could do this through a more intensive form of development, which might be residential now or something else in the future. There are some provisions in the Territory Plan, for example, which relate to development not only fronting Northbourne Avenue, close to the city, but in the layers close behind which also back onto the residential areas of Turner, Lyneham and Dickson. What has happened there is that some separate development controls—almost parallel zones—have been determined for the so-called B11 and B12 areas. They are areas where you have a crescendo of densities towards Northbourne Avenue,

are areas where you have a crescendo of densities towards Northbourne Avenue, which really heightens the importance of that avenue and allows the opportunity for more intensive residential forms, consistent with its importance in the plan for Canberra.

The same thing could happen around State Circle. That approach has certainly been taken with the York Park master plan for the area of the DFAT building and for pockets of Barton, but it has not been consistently applied and there is no such provision relating to all areas fronting State Circle. This is an opportunity to take the strategic view of what State Circle will be in the future. There are very low intensive development sites around State Circle, such as the Jewish national centre and the Forrest day care centre. In the long term this may not be the case, particularly as some of the edges to State Circle are diplomatic missions. My own company is designing the new Turkish embassy, which will be between Adelaide Avenue and Perth Avenue. That will have a significant frontage to State Circle because that is the recognisable address.

Senator LUNDY—On the role of the institute and your relationship with the National Capital Authority, have you had an opportunity to lobby and present your view to the National Capital Authority?

Mrs Middleton—Not at all. Quite frankly, we were not aware of this hearing until just before it was time to put in the submissions. What has gone before is almost historical, but it is difficult for our institute because most of our members work for either the National Capital Authority or PALM. So those of us in private practice are left to form an institutional view on their behalf.

Senator LUNDY—With respect to the previous and the current proposed amendment, putting aside the issue of uplifting or redesignating that area, what is your view of the proposal in that amendment to significantly limit, for example, height and block ratios and those other elements that are quite tightly constrained and defined in both the former and the current proposals?

Mrs Middleton—I think that the provisions are perfectly adequate for the residential properties, say, between National Circuit and Somers Crescent. But for those properties that essentially address State Circle or that have the potential to be more comprehensively developed by block amalgamation, there should be provisions and opportunities for a higher allowable building height. For other main avenues it is generally three to four storeys. In the designated areas of Barton it has been restricted to the height of the trees—that used to be three to four storeys, but it is now something like five to six. Recent developments on Brisbane Avenue are allowing three to five storeys. This is further down Brisbane Avenue so I think that something of that order could be allowed for State Circle. Certainly, there could be something more intensive in terms of density. The B11 and B12 areas of the Territory Plan close to Northbourne Avenue, which I referred to previously, allow three storeys and a plot ratio of 0.8 to one. So something of that order, I think, would be getting closer to the mark.

The other point I would like to make is that, because of the design of Parliament House—which we all love—and the extensive landscaped areas around it that are on the other side of State Circle, there is almost a psychological remoteness between Parliament House and the rest of the city—and visually, too, for that matter. If the edges of State Circle are reinforced appropriately with more intensive development I think that somehow this psychological barrier could be reduced and a better plan would result.

Senator COLBECK—We heard evidence before about the difficulties with two systems that exist in the area at the moment. As a private practitioner who is not involved in either of the two authorities, how do you react to that and what issues do you have with that, if any, in having to manage those sorts of things that crop up in practice?

Mrs Middleton—How long have we got?

Senator COLBECK—You have answered my question—it is an issue.

Mrs Middleton—As a private practitioner in this town, we work with the two authorities and their jurisdiction is essentially quite well delineated, but in areas of national capital significance the water is muddied and there are definitely areas where perhaps the Territory planners could be taking a more national capital view of life, and I think this is one of them.

Senator COLBECK—That answers my next question too. Thank you.

Mr NEVILLE—I was particularly interested in the point you are making in paragraph 20 of your submission. You say:

> The ACT Government's Urban Housing Code (Appendix 111.3 of the Territory Plan) is based on the principles of AMCORD and allows more intensive urban development at selected locations.

I am at a bit of a loss to know what your vision is. In this instance you do not know if the ACT government's regime is appropriate for that area.

Mrs Middleton—That is correct.

Mr NEVILLE—You have talked a lot of generalities. What would be your vision for that? Is it that the first two depths of existing housing should perhaps be commercial? If so, what sort of commercial? You talk about high-rise: what form of high-rise? High-rise has two very different images in Canberra. There is some appalling high-rise in Canberra, especially some of the residential stuff, and there are some exquisite buildings and some rather beautiful buildings. Could you give us what the vision is? I think you have been skirting around it—I would like to know what you would envisage for that. I take your inference to be that you would like to see it remain with the National Capital Authority. Could you give us a bit of that flavour?

Mrs Middleton—In terms of land use, I think residential is very appropriate at the moment because it is surrounded by residential. But this is now. We are thinking 10 or

20 years away. Maybe there will be pressure for other land uses with a higher purpose because of the proximity to Parliament House. Therefore those properties which are close to State Circle and indeed front State Circle are an opportunity to develop land uses of, if you like, national capital significance that relate to the workings of Parliament House and to the parliamentary areas around it.

In terms of a vision, I have some personal views, but I think generally our institute would like to see an integrated vision for the treatment of State Circle around its entire circle, not just in parts. We would like to see a strategic plan, a design outcome for that very significant main avenue. This does not exist at the moment. It exists in general statements in the National Capital Plan; the general intentions are there. But this is an opportunity to define what we mean by the development or planning outcomes of future developments, particularly fronting State Circle. We think that you could allow more intensive urban development or land uses which would heighten the importance—almost a crescendo of massing of buildings towards Parliament House. I think in an urban design sense this would be appropriate. I realise that there are not always good examples of more intensive residential development in Canberra, but there are in other cities. The National Capital Authority is perfectly capable of determining design guidelines to achieve high-quality urban outcomes.

Mr NEVILLE—I do not want to put words in your mouth, but do I read you as saying that, despite the overlap of the two regimes in respect of this area, to uplift this designation in isolation from the rest of State Circle just adds to the piecemeal approach?

Mrs Middleton—That is correct, it does. At this stage where it ends at National Circuit is totally consistent with the designation.

Mr NEVILLE—I thought that was where you were going.

CHAIRMAN—There being no further questions, thank you for your attendance here today, Mrs Middleton.

[10.23 a.m.]

MACKENZIE, Mr Stuart Bruce, Senior Town Planner-Urban Designer, National Capital Authority

PEGRUM, Ms Annabelle Nicole, Chief Executive, National Capital Authority

SCHULTHEIS, Mr Ted, Principal Planner, National Capital Plan Unit, National Capital Authority

WRIGHT, Mr David Terrence, Director, National Capital Plan, National Capital Authority

CHAIRMAN—I welcome witnesses from the National Capital Authority. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as the proceedings of parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Are there any corrections or amendments that you would like to make to your submissions?

Ms Pegrum—No, not at this time.

CHAIRMAN—The committee prefers that evidence be taken in public but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask some questions, do you wish to make an opening statement?

Ms Pegrum—I have a submission to make.

CHAIRMAN—Please proceed.

Ms Pegrum—As a point of order, am I able to make some comments about prior witnesses statements as part of my presentation or is that not appropriate?

CHAIRMAN—I have no objection. Do any of the other members have any objection? There is no objection.

Ms Pegrum—I will be presenting a PowerPoint presentation and we have supplementary drawings in the event that you have questions on some of those images. For the interest of the committee, I would like to table a copy of the overhead presentation for your consideration.

CHAIRMAN—Do you wish to apply to table those now?

Ms Pegrum—Yes, thank you.

CHAIRMAN—Is it the wish of the committee that those documents be tabled? There being no objection, it is so ordered.

Ms Pegrum—The National Capital Authority is a statutory agency of the Commonwealth which was established and operates under the Australian Capital Territory (Planning and Land Management) Act 1988. The functions of the authority are set down in the act and may be summarised as requirements to prepare, review and amend the National Capital Plan. We also have requirements to maintain, build and enhance those areas of the capital that are considered to have national significance and to foster an awareness of Canberra as the national capital. The act also sets down statutory processes for the proposal of amendments and for their consultation processes, representation and subsequent approvals, and we have made those details available to the committee in our written submission.

The object of the National Capital Plan, which has been adopted by the Commonwealth, has the objective—which is also set out under that act that I have just described—is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance. It is complemented by a Territory Plan, the object of which is set down in the Australian Capital Territory (Planning and Land Management) Act 1988 as ensuring—in a manner not inconsistent with the National Capital Plan—that the planning and development of the Territory should provide the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation. Within the context of planning control within the Australian Capital Territory, there are issues associated with land and those areas deemed to be 'designated areas' under that act.

I would like to reflect upon some of the comments made about national land, Territory land and works approval control. In my view, I think it is a commonly held myth that there is an overlap of the works approval role and that that aligns, in any manner, to national or Territory land. We have provided the committee with definitions of national land and Territory land as defined under the act. National land pertains to land that is set aside for the purposes of the Commonwealth, either by virtue of the national capital importance or uses of that land, or for the purposes of the operations, if you like, of the Commonwealth. Territory land is all of the remaining land.

Works approval control is defined in the act as 'designated areas' and because it does not necessarily align to those uses, designated areas may be on national land or Territory land. Perhaps the clearest way for me to state this is that in designated areas a person seeking works approval comes to the National Capital Authority only. In all other areas, a person seeking works approval goes to the ACT planning authority only—the Planning and Land Management group and their planning commissioner. Perhaps where the complexity arises is, in fact, in relation to the approach routes and avenues where, for example, those areas are deemed to have special requirements. The authority does not have works approval in those areas, the Territory does, but the authority establishes development control plans. State Circle is a designated area. It is not an area of special requirement such as Canberra Avenue.

CHAIRMAN—Let me interrupt you there very briefly. Are you saying then that the national and Territory lands abut but they do not superimpose?

Ms Pegrum—I am saying that designated planning works approval control, as described in designated areas, can apply to either Territory land or national land if, as you can see on this particular image, that area is deemed to have the special characteristics of the national capital.

CHAIRMAN—Even though it is Territory land?

Ms Pegrum—Even though it is Territory land, and there are other areas in Canberra that are similar. I recognise that this may be an issue but it is quite a separate issue.

CHAIRMAN—In your view it is quite clear.

Ms Pegrum—Yes. The Deakin-Forrest residential area and environment is a designated area for the reasons I have described. It has the special characteristics of the national capital. This aerial view that you can see clearly indicates that that national significance and characteristic derives—as other witnesses have proclaimed today—from it being a critical part of the setting of Parliament House and indeed of the parliamentary zone itself. You can also see from this image that it abuts to the west of the diplomatic areas of Yarralumla and to the east of the areas of Barton which are largely commercial office development, originally established largely, I might say, for Commonwealth offices and now including our private sector office development. For these reasons this area has always been considered to have the special characteristics of the national capital and was included in the plan as a designated area.

On closer inspection one can also see the proximity of this particular subject area to Parliament House and in particular those areas which actually abut and front State Circle. The area that we have excised in the middle relates to national land that has been set aside for diplomatic embassy purposes, and you can see that the area on the western side abuts the Prime Minister's Lodge site adjacent to Adelaide Avenue. On the eastern side it abuts Hobart Avenue and, on the other side, the Forrest Primary School and synagogue developments, with St Andrews on this side. Here are the Foreign Affairs buildings at the moment and the commercial development of Barton.

In the National Capital Plan, figure 7, the land use has always been indicated largely—with the exception of course of the diplomatic mission sites, which are shown in pink here—as residential purposes. The construct and considerations of land use have been important from about 1993. A number of residents and lessees from time to time have proposed to the authority that we reconsider the land use, putting forward arguments such as the proximity to Capital Hill and that the House should be allowed to expand for parliamentary purposes into that area—buildings for commercial offices associated with the functions of the government, press offices, and the like.

Because of that, the authority did undertake quite seriously to consider whether there were any sound arguments for changing the land use from residential from about 1998 onwards through to March 2000. It did this in the context of an early planning study into the area in early 1998 and then, with the announcement of the parliamentary zone review, agreed that it be incorporated into the considerations of the parliamentary zone. It took into account representation from some groups from that area as well as the considerations of the Parliamentary Zone Advisory Panel to the authority, which included people such as Mr Romaldo Giurgola, the renowned architect of Parliament House, and Professor James Weirick who is a Griffin scholar and has a continuing interest particularly in the landscape structure of the capital.

They met with some of the representatives from this area and their considered opinion at the end of the review of the zone was that there were no sound planning reasons to change the existing residential land use to, for example, commercial uses in this area, with specific attention being given to the sites fronting State Circle. Part of their considerations pertained to the potential of the parliamentary zone to accommodate national capital uses associated with the seat of government and cultural institutions. They felt that there are at least 50 years of development left to achieve this type of an indicative development plan without impacting on the open space structure, dignity or form of the parliamentary zone and that there were still substantial opportunities within the Barton commercial area to take such uses. So in their considered opinion—and the authority concurs with that—for at least 50 years there are substantial opportunities for uses other than residential in this area. They were also particularly concerned about the relationship of this overall subject area to the suburban areas of Forrest and Deakin, which, as previous witnesses have already pointed out, was always in the Griffin plan and is considered, if you like, typical of the best of early Canberra suburban development.

The committee has shown a particular interest in the progress of the draft amendment. I have outlined the considerations associated with land use. The authority remains completely convinced that it would be totally inappropriate to change from a residential land use in this area for all of the reasons I have described. In March 2000 the Territory's Planning and Land Management group wrote to the authority requesting an uplift of the designated area status. They thought that because this was Territory land and in a residential area there were equity issues associated with this and that we could consider that. At that time the authority was of the view that it should not uplift the designation but it did take on consideration of other issues such as home based business and, at that time under the Territory's planning policies, opportunities for residential redevelopment above that currently permissible in the Territory Plan. Suffice to say there was considerable discussion between the two agencies that finally resulted in the authority proposing draft amendment 39 at the end of year 2000, which did include a provision to uplift designation. I stress here, for the interest of the committee and the public, that the intention was that that was considered to be at the time the appropriate technique to achieve the kind of urban outcomes and redevelopment opportunities for this area that was most appropriate at that time. It allowed us, we believed at the time, to introduce these provisions without going through planning acrobatics at that time.

In the year 2001 there was considerable progress in the draft amendment including the public commentary period and consultation with PALM and representation from other groups. Perhaps the cogent issues here occurred in August 2001 when PALM agreed to the additional design specific proposals that you now find in the current amendment. These primarily came out of the public comment period and included additional provisions such as prescriptive setback and height controls. There was considerable discussion, as you can see, prior to that, where the Territory was still exerting quite a strong desire to introduce in particular commercial uses and expansions of how we interpreted residential use to allow for serviced apartments. So the changes were design specific and an exclusion of serviced apartments as a residential use. In that period of time—October for the Territory and November for the Commonwealth—there were two sets of elections, a prorogued period, and for those reasons progress of the amendment was halted.

On 6 December the Territory announced Draft Territory Plan Variation No. 192, which in effect put in place a moratorium on extending dual and triple occupancies. The Territory announced that it would look quite comprehensively at its residential policies and local plans. You can see in the timing this occurred the day before the authority met in December of that year. The authority discussed what the implications of these changes might mean for State Circle. Specifically, the authority was aware that this would in effect halt dual occupancy, which is currently permissible under the National Capital Plan in the area, and it determined that it should at least wait and reconsider whether it was appropriate to uplift designation because we might be introducing layers of complexity that would in fact block the urban outcomes that we sought to achieve.

The minister responsible for the National Capital Authority and in particular for approval of amendments to the plan was appointed in early February 2002, the same month that the new joint standing committee was appointed. In February, the authority determined that it was now timely to progress DA39 and reaffirmed that we should retain the designated status. The minister referred the DA to the joint standing committee and we are here today because of the outcome of the committee's considerations for a public hearing. I hasten to say that we did make it clear to the minister that we had not been back to the Territory with regard to the decision not to uplift designation. It was a courtesy to an incoming minister and an incoming joint standing committee, and we have not been able, in our understanding, to go back post the decision to hold the hearing because it was subject to the considerations of this hearing. If I could just correct a statement that Mr Calnan made—I am sure through no intent: it has not been formally referred to the Territory at this time.

Post the announcement of the public hearing, the Territory has now introduced some of those planning policies that it suggested last December might be coming forward in May, which is Draft Territory Plan Variation No. 200, commonly called the garden city variation, which relates to residential land use policies that would have a direct impact on the provisions of this site if designation were uplifted. I should also point out that we, too, have not had an opportunity to comment on this draft variation at this time.

What we have looked at across all those years of consideration and through those processes are: what are the urban design opportunities that we believe are appropriate to this important area of the capital? What you see before you is a summary that takes into account the consultation through to April this year and the representations made over time of what we believe those outcomes should be: a secure residential character and land use; equity for home business—the comments that Mr Calnan made were completely appropriate and we concur with them entirely; better design outcomes with some prescriptive measures in place, that specifically address those blocks fronting State Circle with regard to height and density; and an encouragement with a 0.6 plot ratio to go to higher levels of urban redevelopment than could be achieved under the current 0.4 for the other blocks that allows for dual occupancy.

I would like briefly to go through some of the planning scenarios of the implications of the, if you like, changes to the draft amendment through the changes in planning policy and with regard to the considerations through public comment and representation. The first is a snapshot of what the current provisions of the plan allow. Currently the authority is responsible for planning and development works approval control. The pattern of residential development would continue if the plan were not amended. We do allow currently for dual occupancy, so we would see single dwelling and dual occupancy continue. We believe the incentive for residential development on State Circle would continue to be limited. The fact that there has been very little redevelopment on this subject area fronting State Circle is evidence that there needs to be some incentive in there for people to invest and consider the possibilities This includes the setting for Parliament House within the residential context and the requirement for an owner to reside in a home business, which is the cogent difference between our provisions and those of the Territory Plan. The Territory Plan requires only a bona fide employee or a direct relation of the owner to reside in the building. We require the owner to reside currently. Consultation under the National Capital Plan designated areas is only required for dual occupancies and only on the basis of discussion and consultation with the immediate neighbours. We do not have the provisions for notification, consultation and appeal for residential areas currently under the Territory Plan. In effect, under the current plan what you will get is a continuation of this sort of image on the blocks fronting State Circle. You can see the new development that is almost complete on State Circle and the mixture of two-storey and single-storey dwellings.

The second scenario is if we took the provisions as they were when the draft amendment was originally proposed, with designation uplifted, transferring responsibility to the Territory government. It has been said this morning, and it is quite accurate, that the Territory Plan cannot be inconsistent with the National Capital Plan. That is correct. However, what you need to take into account here is the complexity of a set of policies which we believe, on the analysis we have done to date, would in effect cancel each other out. So what you have here is, with the current Territory Plan variations applying—and bear in mind that they have interim effect so they are effective now, albeit in draft form—both the policies under the National Capital Plan and the policies under the Territory Plan would apply, so what would be approved is the gap between. As we understand it that would mean that, despite the policies that we currently have in place, triple occupancy and multi-unit development would be prohibited because our plan cannot force people to do it. It can only say you

can. If the Territory Plan says you cannot there is not a lot of gap between. All redevelopment would be small scale and the dual occupancy would be significantly limited because the five per cent rule under Draft Territory Plan Variation No. 192 continues to apply. Currently there are two built dual occupancies in this area. There is one that is approved and could be built and there is one which we are aware is about to be lodged. In our assessment of the five per cent rule, that would allow one more dual occupancy in the whole area. The incentives to enhance State Circle would be significantly lost because without unit titling and triple and multi-unit development I think status quo would continue on those sites fronting State Circle. Definitely the quality landscape would be retained. We all believe in the garden city quality landscape. There would be home business equity and you would have Territory consultation notification and appeal.

CHAIRMAN—Can I just clarify. Are you saying, then, that where the application for dual occupancy is lodged with the Territory government, were that approved that would be the last that could be approved under the National Capital Plan, not under the Territory's Plan?

Ms Pegrum—If the designation were uplifted now with the current provisions, in our assessment that is correct. If the designation is retained, dual occupancy now, without the amendment, is permissible on blocks in the subject area.

CHAIRMAN—But where there is a conflict between Territory Planning and NCP then the NCP, insofar as there is a conflict, prevails.

Ms Pegrum—If designation were uplifted, what you require is for both sets of policies to be matched, so what you are looking for is a scenario where, one, the National Capital Plan allows for it; therefore the application is not inconsistent with the plan but it is also meeting the intentions of the Territory Plan. That is if it is uplifted.

CHAIRMAN—And if it is not?

Ms Pegrum—If it is not uplifted, I can show you that in the next scenario. May I say there is a way through this—and Mr Calnan has indicated that—which is that we could look at area-specific policies through changes to both the new plan variations of the Territory. Our concern here is that there has been lengthy urban consideration on this. There has been lengthy public comment and consultation on this and consideration. The Territory had indicated to us that it agrees with, as recently as last August, the specific provisions that we are proposing. Why would we now wait to see, one, what the consultation on the draft Territory variations would be and then seek a variation on those variations to achieve what we can achieve by simply retaining designation at this point in time whilst everybody acknowledges that this is a significant area? We do not believe that we should step away from it unless we are certain of what the outcomes might be. That is the reason why we have chosen not at this stage to uplift designation.

With regard to the scenario I have just outlined—in other words all of our provisions but designation uplifted—for the reasons I have outlined, this is what we

believe would be the likely urban design outcomes, which is fairly much status quo if you look at the sites specifically on State Circle and an opportunity for, say, one more dual occupancy in the rest of the subject area and that dual occupancy could not be unit titled.

Senator LUNDY—The unit title is of interest to me. Are you saying that under the existing scenario you do not allow unit title?

Ms Pegrum—No, I am saying that under the Draft Territory Plan Variation No. 200, unit titling is not permitted.

Senator LUNDY—But the dual occupancy that is there now can have the entitling.

Mr Schultheis—No, I think there is a provision that says that, under the Unit Titles Act 1970, unit titling is not permitted.

Senator LUNDY—So it is not permitted under the current scenario?

Mr Schultheis—Under the existing provisions in the National Capital Plan.

Senator LUNDY—Are you proposing to change them?

Mr Schultheis—We will be reconciling the provisions if the designation stays. We wish to have further development in that area to make sure that is not a constraint, so at least there will be opportunity for further development of amalgamated blocks that would not conflict with that provision.

Senator LUNDY—I will come back to that. That is really important.

CHAIRMAN—We will come back to you on that. Ms Pegrum, could you please continue?

Ms Pegrum—I will go back to scenario 3, which is the draft amendment 39, as we have currently drafted it with designation retained. In effect, we retain planning and development approval. We think that is appropriate at this point in time. There would be maximum two-storey residential development throughout the area. I should point out that the height of development was an issue that was raised during the public comment period. I should also point out that issues associated with landscape setback and quality of development were also raised during that period.

Multi-unit redevelopment and block amalgamation would be a possibility. Block amalgamation is a possibility now. There is just very little incentive to do it because, under our current plan, the best we could do with it, as we understand it, is a dual occupancy. Special design conditions, as I have outlined previously for State Circle, would exist, including a 10-metre setback and a mandatory maximum and minimum two-storey height limit because we are trying to get a uniform and quite proud building development along that frontage.

We believe we would get quality residential redevelopment, including dual occupancy and multi-unit accommodation, permitted by the special architectural and design controls that we have proposed in the draft amendment. We believe the landscape character would be enhanced and extended because of the provisions for setback and plot ratio. There would be home business equity. The terminology would not be identical to the Territory Plan, but the intent would be very closely aligned and, I would suggest, identical in terms of use on the ground.

Consultation would continue for dual occupancies. I should also point out that, from my recollection, there was no comment made during the public commentary period from the residents in the area or from others about a desire to introduce the same sorts of notification, consultation and appeal mechanisms of the Territory. The kinds of outcomes that you would get would be dual occupancies such as you can do now. This is showing you four blocks with dual occupancy.

You can see here in the black and the white the existing one on those areas fronting State Circle. You can see in the section the kind of amenity that we would be looking at achieving on those blocks. In addition to that, block amalgamation on State Circle would allow a plot ratio higher than 0.4 at 0.6 and a mandatory two-storey development. In effect, this is the kind of development that we would likely see along the State Circle frontage. All of these design outcomes have been done taking into account full considerations of GFA plot ratio setback and the like. We are happy for our town planner to go through that with you in detail at another time.

For all of these reasons, in our view, draft amendment 39 is achieving the same sorts of outcomes that we originally proposed in November 2000 and revised in consultation with PALM following the public comment period in August 2001, with certainty that we can achieve those current Territory planning policies. It is still a draft amendment. It is still open to further consideration and discussion.

Mr CAMERON THOMPSON—There seems to be a bit of heat about unit titling. What is the story with that?

Mr Wright—The dual occupancy policies are set out in the appendices to the National Capital Plan. There is a specific reference to unit titling under a broader reference to subdivision not being permitted. The reference to the unit titling which could lead you to a view that unit titling was prohibited I regard as an observation rather than a policy of the plan. It is on page 133 of my version of the plan. It says:

Subdivision of a block into two separate parcels will not be permitted under the policy.

That is fairly unequivocal. But it then goes on to say that unit titling would not be permitted under the provisions currently contained in the Unit Titles Act 1970. My understanding is that previously the minimum requirements for unit titling were four units and that has subsequently been amended. I do not have the reference with me but I think it reduced it to unit titling of two properties. So while it might appear as if that suggests a prohibition, in my view it is not.

Mr CAMERON THOMPSON—Unit titling is fairly common across Canberra though, isn't it?

Mr Wright—It is. It is not a matter that we normally deal with because that is usually a function of the lease administration, and typically that is done by the Territory government.

Ms Pegrum—However, I should point out that under Draft Territory Plan Variation No. 200, in suburban areas unit titling, as we understand it, will not be permissible.

Mr Wright—That is a specific policy.

Senator LUNDY—Does the current dual occupancy or any other dual occupancy in that area we are talking about have separate unit titling?

Mr Wright—I do not know the answer to that. We can find that out.

Ms Pegrum—Yes, we can take that on notice.

Senator LUNDY—Based on what Mr Wright just said, it would not be eligible to have unit titling.

Mr Wright—No, it would. My interpretation is that they would be permitted.

Senator LUNDY—That is a regulation under a federal act?

Mr Wright—It is the Unit Titles Act that applies in the ACT. It was originally promulgated in 1970 and has been amended.

Senator LUNDY—Okay. I am just trying work out under which jurisdiction that law exists. Is it federal or ACT?

Mr Wright—It is a Territory law and would apply in these areas because the land that we are talking about relates to leases administered by the Territory.

Senator LUNDY—If it were to retain designated status, and currently, what would the process of application be for a person applying for separate unit titles? Would it be through the NCA or a Territory authority?

Mr Wright—It would depend first of all on what their existing lease provisions were, as Mr Calnan explained. If a lease variation was required, that would be one process. The unit titling process, as I understand it, is a quite separate one, but it is undertaken as part of the lease administration rather than the planning approvals process.

Senator LUNDY—So even if full designation is retained by the National Capital Authority, any development that proposed a unit title change or the creation of unit titles on a particular block would require a process through the ACT government?

Mr Wright—Yes.

Senator LUNDY—With respect to block amalgamation, can you just bear with me and go through the three scenarios and describe the implications for the potential or otherwise of block amalgamation for each of the scenarios?

Ms Pegrum—Mr Chairman, if you are happy with this, Stuart Mackenzie will outline these with the drawings, and I am happy to bring those closer to the committee members.

CHAIRMAN—Yes, thank you.

Mr Mackenzie—We can do it on screen. On scenario 1—

Ms Pegrum—We do not have one for that because it is the status quo.

Mr Mackenzie—Okay. We will look at the status quo drawing. These are the existing blocks fronting State Circle. They are very large blocks, 1,500 square metres or so, which is about double the average for large suburban blocks in established parts of Canberra. We are dealing here with an area that is one of the most distinguished garden suburbs in Canberra, if not the nation. Some of the qualities of this suburb are the large areas of open space, the setback from the street, and regular rows of street tree plantings. But it is an area that is under change. I would like to show you what sorts of development principles or urban design principles underpin some of our controls in managing change on this site.

The first is to achieve a quality of urban design outcome—that is, a streetscape that is commensurate with the status of the site, addressing Parliament House, and with the status of the suburb as a very special garden suburb in Canberra. On the next slide we can see dual occupancy development which would be permitted on individual blocks within the current version of DA39 as proposed.

Some of the design principles informing this include that it would be a mandatory two-storey development—the dark building footprints shown in the image—fronting State Circle, to give the prestige and bulk of urban form to the street. To the rear would be single storey—a more diminutive scale and a better transition to the rear neighbours, protecting neighbourhood amenity, interface and overlook, and providing opportunities for more open space in the rear areas of the yard to provide that essential landscape buffer and to allow large trees to grow and continue the fabric of tree canopies throughout the garden suburb area. I should also point out that the vehicle accommodation would be generally directed to the rear of the blocks to reduce the impact of double garaging on the streetscape. That is an important streetscape outcome.

Ms ELLIS—Is that with designation uplifted?

Ms Pegrum—No. This is also currently permissible under the existing National Capital Plan. You can develop a dual occupancy of this nature now within the subject

area. We do not have a provision for the maximum two-storey height. We could use our development conditions to do that now under the appendices.

Senator LUNDY—I would like to clarify: this diagram matches the one over here which says 'with designated area status uplifted'.

Mr Mackenzie—Yes, but it also matches the image over here which is showing dual occupancy redevelopment would be permitted under the current DA39 proposal.

Ms Pegrum—I need to clarify that. What you are looking at is scenario 2. In November, before the new Territory Plan's policies, that would have been achievable with designation uplifted.

Senator LUNDY—That is what I thought. You are saying that has changed?

Ms Pegrum—The image at the bottom is showing that, because of this gap structure, unless you have area-specific policies you cannot do it because of the five per cent rule.

Mr NEVILLE—On a point of clarification, going back to scenario 2, and taking the one on the left: how many sets of living units are there?

Mr Mackenzie—It is dual occupancy, so the maximum number of living units is two. It has a plot ratio of 0.4.

Mr NEVILLE—What are the two lighter areas?

Mr Mackenzie—They are the garages.

Mr NEVILLE—I understand now. You started to talk about single-storey buildings at the back. I wondered what you were talking about.

Mr Mackenzie—The garaging is shown with a cross through it. That is the size of a double garage.

Ms Pegrum—This is a double garage. You can see it here in light pink in the section view.

Senator LUNDY—But the one on the right is a building at the back?

Ms Pegrum—This part is a dwelling extension.

Mr Mackenzie—It is an extension of that double-storey dwelling.

CHAIRMAN—But it is a single storey; is that right?

Ms Pegrum—That is right. The interesting thing is the interplay between setback, plot ratio and height. Plot ratio is forcing you, if you go to an extension like this and

you have the two storeys at the front, to single storey at the rear. In other words, it would be difficult to achieve the plot ratios, as they are calculated, with two storeys at the front and two storeys at the rear. These things work together to give you control over the outcome, which is why we are showing you these.

Mr Wright—I would like to make a point. The significance of building height and designation is important here. If designation is uplifted and the residential land use policies as proposed under the Territory Plan variation 200 come into effect in this area, the effect is to rather frustrate the attempt to get a solid urban edge. One of the prescriptions that applies to suburban areas is that the maximum plot ratio is 0.35, but the second dwelling (a) can only be a single storey and (b) can only be a maximum of the equivalent of 0.15. So with the existing form of development that you have there, the dual occupancy policies that would apply for suburban areas would produce a lesser order of development on these sites and therefore frustrate, albeit unintentionally, the attempt to get a more solid urban form and edge to the State Circle frontage.

Ms Pegrum—That is somewhat academic because you would not get any additional ones on this frontage anyway.

Mr Wright—You have only got five per cent.

Senator LUNDY—I have a question about that relationship and consistency with the proposed Territory Plans. I will use the scenario that those amendments are enforced. What opportunity is there to attach conditions to this frontage that go above and beyond, for example, in relation to plot ratio and height? What is outlined within the Territory Plan?

Ms Pegrum—What I was trying to show with this is that you could, in effect, achieve what we want to achieve under the Territory Plan, but you could only do that, as we understand it—and I think Mr Calnan was addressing it in the same way—through area specific policies in the Territory Plan. So it is not just a matter of amending the National Capital Plan; you would have to vary the draft variation of the Territory Plan. There is a timeliness issue here as much as anything else because their current draft variations, variations 192 and 200, are still draft even though they have interim effect, so there is consultation and public comment going on now.

Senator LUNDY—I am so pleased to hear your concerns about shortening time lines on consultation, particularly in relation to another matter.

Ms Pegrum—I am not suggesting shortening time frames on consultation. I am suggesting two years of consideration for this particular draft amendment and this particular subject area.

Senator LUNDY—I cannot help but draw the parallels with amendment 41.

Mr CAMERON THOMPSON—I have a query about the one that we were on before—the plot ratio 0.4.

CHAIRMAN—Mr Mackenzie, could you put your light on that so we know what Mr Thompson is talking about?

Mr CAMERON THOMPSON—The third one from the left—

CHAIRMAN—Which is reflected in the middle one.

Mr CAMERON THOMPSON—Yes. Out the back, in the one-storey area, you seem to have two living areas on one plot.

Mr Mackenzie—That is a single-storey wing of dwellings. What we have here is a semi-detached dwelling type, but there is a party wall down the middle with a pair of double garages to the rear and separate, private open spaces flanking that.

Mr CAMERON THOMPSON—Isn't that dual occupancy?

Ms Pegrum—It is; that is exactly what we are saying.

Mr CAMERON THOMPSON—So the one-storey dual occupancy is available there?

Ms Pegrum—No. I think I understand the confusion. This is not one building and this another. This is one residence, the front part of which has two storeys and the back is single storey. That is one occupancy and that is another occupancy.

CHAIRMAN—With common ground in the grey hatchet area?

Ms Pegrum—That is the carparking access coming through to carparking provisions at the rear of the block.

CHAIRMAN—So it is common to both.

Ms Pegrum—Yes. This is one block with dual occupancy. As Mr Mackenzie pointed out, these blocks are about 1,500 square metres. Applying a 0.4 plot ratio, the 10-metre setbacks and the height restrictions, that is what you can achieve on one block, and you can achieve that now.

Mr Mackenzie—They would be large dwellings under that plot ratio. It is permitted to develop 600 square metres of floor area including the garage area, so dividing that into two 300-square-metre developments allows for about 50 square metres of garaging and a 250-square-metre residence—or about 25 squares. So they are large, prestigious developments, potentially.

Senator COLBECK—In the proposed draft amendment 39, what limitations do you have on block amalgamation? I recognise that block amalgamation achieves one of the outcomes, which I think is very desirable, in limiting the number of access points off State Circle. But block amalgamation if it is more than two starts to open up—

CHAIRMAN—It would not be more than two.

Senator COLBECK—Is there a limitation?

Ms Pegrum—At the moment, a person could buy two blocks and amalgamate them. They could do that now, but they are limited in the redevelopment opportunity with block amalgamation to dual occupancy. With draft amendment 39 as it is now proposed, allowing a higher plot ratio of 0.6 on those blocks fronting State Circle is your incentive.

Senator COLBECK—Plot ratio is the limiting factor on block amalgamation.

Ms Pegrum—On redevelopment through block amalgamation.

CHAIRMAN—Could you clear that up for me: you are talking about the National Capital Plan not the Territory Plan?

Ms Pegrum—Yes.

Senator LUNDY—Does that plot ratio still only allow for dual occupancy or are higher densities permitted if that block amalgamation were to occur?

Ms Pegrum—The plot ratio allows for triple and multi unit development. It restricts the extent of that development to block size. Dual occupancies, and in fact all other blocks within the subject area, have the 0.4 restriction of plot ratio. What we are doing is pushing density of development onto those blocks fronting State Circle—that is the incentive. So, yes, you could have triple occupancy and/or multi-unit or a mix of multi-unit and dual occupancy on those blocks fronting State Circle, provided that they generally met the 0.6 plot ratio provision, the 10-metre setback and the two-storey height.

Mr NEVILLE—Could you give us a scenario 4 on that—a number of blocks amalgamated? You have given us what two would look like. Could you give us a look at what a four or a six might look like? That is seminal, isn't it? What is State Circle going to look like if you allow some form of multi-unit development?

Mr Mackenzie—In this example, for instance, if there were four blocks under one continuous group development—at the moment there is a pair of two blocks—the sorts of controls that we would be looking to apply are that the garden suburb characteristics and separation between buildings would still be retained. We would still get a reasonable bulk of built frontage but with spaces between the buildings for the large trees and views between.

Mr NEVILLE—I think there would be a suspicion within the committee, not directed at either the NCA or the ACT, that Canberra has been quite uneven in that sort of development over the years. That is why I ask whether you could do a scenario 4 for us, not necessarily in this basic symmetrical design but showing what other things might be permitted, so that we could get an idea of what it would look like.

Ms Pegrum—We would be happy to do that.

Mr NEVILLE—Is the scenario planning that you have put to us discrete to the front of National Circuit or does it also apply back into the suburb itself?

Ms Pegrum—The plot ratio of 0.6 is directed at the blocks fronting State Circle. The maximum plot ratio permissible for all other blocks is 0.4, which would suggest dual occupancy. This is providing an incentive for denser development for those blocks fronting State Circle but still allowing dual occupancy for the rest.

Mr NEVILLE—So anything in the remaining part of the designated area would be limited to something akin to a scenario 1?

Ms Pegrum—It is more akin to something like this. But they would not actually have the provision of a mandatory two storeys; they would have a maximum two-storey limit. So you could have single-storey dual occupancy in the rest of the suburb.

Senator COLBECK—I asked PALM earlier today to provide a flow chart or a table to outline the process to amend the National Capital Plan. Could you provide—on notice if you like—a table that outlines the public consultation and the public exposure process that you go through so that we can compare the two? It has an impact on the committee's deliberations on the potential for, in the future, things to move away from where they might be now.

Ms Pegrum—I believe we have provided that in our written submission under part 1, which sets out the legislative requirements for proposing and approving an amendment to the National Capital Plan. In parts 3.1 through to 3.4 we have set out the chronology with regard to this specific draft amendment, from its inception through to this point in time.

Ms ELLIS—It gets very confusing when we talk about all the different levels and requirements, so bear with me. The indication is that the NCA is seeking to have a consistent, mandatory two-storey front coming on to State Circle, with your 0.6 plot ratio. That is only that front line of blocks. So the line of blocks behind that, facing that first rear street, have a 0.4 plot ratio with a maximum two storeys.

Ms Pegrum—Yes.

Ms ELLIS—I will put my 'sometimes we have to be cynical' hat on. We have all seen examples in the past of how two storeys becomes 2½ or three, with half basements and attics. The economics of this area do not suggest to me—and this is not a criticism—that there would be very much, if any, single-storey dual occupancy or anything else on that rear line of blocks. In reality, there would be a temptation to maximise the investment, even though there is this 0.4 plot ratio. What arrangements are there to limit the possibility for the blocks at the rear to actually overlook the blocks on State Circle? In my view that could possibly happen. If you have half attics or half basements and if you have the maximum height through whatever design can be achieved on that rear line, you may in fact not have the two-storey front line you are looking for. Does that make sense?

Ms Pegrum—If I can break your question up a bit, we have taken a bit of a belts and braces approach on the current version of the draft amendment. For example, we talk about the two storeys, but we also include a maximum of eight metres above finished ground level. The reason for that was the basement or attic approach. To be frank, we are still thinking how that might restrict or encourage quality development—higher ceilings and the like. The provisions of the appendices under the National Capital Plan do allow us discretion in that. They provide performance standards that allow us to make some—within limits—discretionary judgments to the quantitative standards in the design-specific statements like that. That eight-metre range that is still in the draft was put in to try to address some of the issues you raised. Mr Schultheis can clarify the point about the plot ratio of 0.4 as it applies to the scale of the blocks, because it does relate to block size.

Mr Schultheis—In the provisions in appendix H—and they also relate to appendix P dealing with dual occupancy—it is related to plot ratio. It is 0.35 in some circumstances and 0.4 in others, depending on block size. There is the discretion to allow some finetuning of that if necessary. So there is a difference in the plan, but—

Ms ELLIS—In your draft ideas is there a maximum height, with the two storey on the second row?

Ms Pegrum—No. The maximum permissible height applies to the whole of the subject area—which has quite a large number of two-storey dwellings now.

Ms ELLIS—Sure.

Ms Pegrum—On the issue of would a two-storey dual occupancy, for example, overlook a back-to-back block, the other provisions are rear setback and performance standards associated with overlooking, light penetration and the like. They apply throughout Canberra to try and control that level of amenity.

Ms ELLIS—The reason for asking the question is first of all to get a clarification of it, but secondly to suggest—I guess a bit more subtly than I intended—that whilst I accept entirely the need to have these limitations and mandatory requirements, design must also be allowed to be considered. You are all nodding. Whilst in one sense they are there to restrict bad use of the block or bad design, on the other hand we cannot do that at the risk of deterring innovative design, particularly on that front row. I am a bit concerned as to how the draft heights and measures and ratios and so on, at the same time as maintaining the reason they are there, can also not deter really good, innovative design. Paul Neville was referring to comment around Canberra about good and bad design. I agree, but it is also in probably every other city in the country. Sometimes we overreact in terms of determining limitations, and that can sometimes actually lead to bad design. That is what I am really getting at.

Ms Pegrum—I agree. I acknowledge this is a bit belts and braces there, although we do have the appendices. We also have the opportunity for development conditions—so we can take a corner site and look at it carefully within the urban context. The way our works approval process operates does allow for negotiated outcomes within the envelope of the National Capital Plan. So our processes, if you

like, do involve a lot of hands-on discussion with proponents of development. We do have a requirement—albeit I acknowledge we have been less than perfect in administering this on one occasion—for consultation with direct neighbours of a development. As I said, this was a draft but I did not want to change it post what you had seen prior to calling this hearing. Currently we have that consultation applying to the dual occupancy. Our view is that in the next version, subject to the outcome of this hearing, we would be recommending that apply to all multi-unit developments so that we at least had to take that on in the process.

Ms ELLIS—To what degree does the current dual occupancy on State Circle—the blocky looking one—exactly meet the current requirements of design, plot ratio or height determined by the NCA?

Ms Pegrum—Very closely. I believe the plot ratio is marginally higher because of that discretion in the appendices, but that is pretty much meeting all of the requirements that we currently have on the plan.

Ms ELLIS—Under scenario 3, one of your dot points is 'quality residential development'. Would that meet that requirement?

Ms Pegrum—We have given that particular development works approval. I would have to allow you to make statements on record about your view of it.

Ms ELLIS—I am very happy to make a statement, but I was hoping the NCA might with its design hat on.

Mr Mackenzie—I would make the statement that one of the important aspects of this development is the garden frontage, and all new developments—

Ms ELLIS—Let us hope it grows very quickly. That would be my on-the-record comment.

Ms Pegrum—We would all concur with that.

Ms ELLIS—I am sorry, but the bigger and the more growth it has, the better.

Ms Pegrum—If I could draw attention to another dual occupancy which we have approved, the one on the corner of Melbourne Avenue and National Circuit—

Ms ELLIS—Which is at the rear.

Ms Pegrum—which has now had the opportunity of a number of years of landscape growth—at least two. I will just show that location for the interest of the committee. It is this one here. It is the one most people refer to as having the copper front. It is two storey, in a rich, almost sable colour with a copper front. At first flush, without the landscaping, it is a very innovative design and a very good amenity and a quality development. Now, with the landscaping, most people regard it very highly in

streetscape terms. The site plan that went with the development on State Circle equally has landscape that I think will address this—

Ms ELLIS—In finishing off, I would just like to reiterate that I think we need to give a tax concession on fertiliser for the gardener who is going to be looking after that particular one.

Senator COLBECK—You and previous witnesses have mentioned the importance and the high value of old Canberra that exists in the zone. When we were talking about the possibilities of further development on blocks deeper into the zone from State Circle, you were talking about capacity for dual occupancy, as shown in example 2. If it is an area of heritage value, what sort of consultations have you done with, say, the Heritage Commission and, for that matter—with respect to Parliament House and the proximity to the Lodge—with PM&C and the parliament with respect to these design ideals that you are looking for and potential heritage overlays to protect the amenity of what you and previous witnesses have said is a significant example of old Canberra and perhaps the possibility of dual occupancy spreading back through the rest of that prime heritage value area?

Ms Pegrum—I do need to get technical here a little bit. We consider this area to be culturally significant but, because it is not actually listed on the ACT's register for their historic listing or with the Australian Heritage Commission, you cannot really call it historically significant. There are no properties in this particular precinct that are listed on a register but they are indeed culturally significant and one might suggest there are some properties that perhaps should be considered in the future for listing.

In the authority's view, redevelopment by definition is not a bad thing in residential areas. Change can be accommodated, and perhaps should be, to allow for those characteristics which we consider to be worth retaining, and even extending, to occur. We do not consider that State Circle as it is now—if I can use that area—is necessarily the finest example of what that precinct should remain forever. We have seen buildings in the total subject area extended. We have seen dual occupancies added that have all the good qualities of that garden suburb as it was originally intended and has grown up over the period of time of the capital. That has to do with the size of the blocks. It has to do with the quality of the landscape. It has to do with the quality of the architecture and the way in which it is made. It has to do, primarily in our view, with streetscape issues. Those pertain not only to covering things up with green bits but to things like setback, access points into properties and where they occur and how they occur and the quality of the materials that are used. We think that there are opportunities for good redevelopment, including dual occupancy, within those areas provided they are thought through. What we have tried to do is think this through to allow that area to continue to take a prime role as the residential backyard to Parliament House.

With regard to the second part of your comment about consultation, within the draft amendment there is now a line provision that requires consideration of developments on State Circle in the future to address the quality of Parliament House. We have not asked, 'What is that? Does it mean it must be white? Does it mean it must have facades that are blank walls? Does it mean you need to use a squared grid akin to the

Melbourne Avenue ministerial entrance?' But it does say that there are qualities there that need to be addressed and looked at. That means they must be provided to us for consideration or we need to describe them at the time. For the same reasons, we have put in place an equal point to address the same concepts with regard to the street that is immediately opposite the Prime Minister's Lodge. With respect to parliamentary consultation, we are here today and we have statutory processes that require not only our referral to the minister and his or her decision to refer to the committee but also disallowance periods for both houses of parliament.

Senator LUNDY—Is consultation, for dual occupancies or any other type of development under your proposal for designated status to be retained, a statutory requirement?

Ms Pegrum—The consultation for dual occupancy under the current provisions of the plan is a requirement. I acknowledged about five minutes ago that we had an administrative fault in one of those recently. I would suggest that those sorts of administrative errors do happen, but we will not allow them to happen again.

Senator LUNDY—Is that the one I am thinking of?

Ms Pegrum—It is.

Senator LUNDY—In relation to the provisions of appendix P?

Ms Pegrum—As I understand it, yes.

Mr Schultheis—Yes.

Ms Pegrum—The current draft amendment proposes to retain that. As I have said previously, it is still a draft in our current view and out of courtesy to this committee I did not want to change it at this time. Our current view is that we should extend that to all multi-unit redevelopment if this draft amendment is approved.

Senator LUNDY—Are decisions made by the NCA in approving developments or works appealable?

Ms Pegrum—No. Neither they nor any other works approvals by the National Capital Authority are subject to appeal in this area. There is an ADJR process that people could avail themselves of, which goes to due process but not to the decision.

Senator LUNDY—You mentioned the home business equity issue. This morning PALM said very clearly that there were still some differences. Do you acknowledge the fact that there are still some differences?

Ms Pegrum—There are differences in the two current plans. The draft amendment, as proposed from November through to now, has sought to address those differences. We believe the current draft will do so.

Mr Schultheis—Could I expand on the question of home occupation raised by Mr Calnan, where he said that the Territory do not require an approval. The authority's approval is an approval for exterior works, so if someone wished to carry out a home occupation that did not involve exterior change to the building or landscape then they could carry that out without any approval from the authority. If there are other approvals they need to get from the Territory in terms of other legislation they would need to do that, but they would not need approval from the authority. So there is a parallel.

Senator LUNDY—Do you have a guidance note or some documentation you could provide to the committee that outlines specifically the home business proposals? I am not looking for something especially for the committee, but it is something that you use to advise residents.

Ms Pegrum—Perhaps we can give you a match between the provisions proposed under the current draft and the Territory Plans. Our view—and I think we are correct here because the Territory has not questioned this in past discussions—is that the critical difference is our requirement for an owner to reside in a home based business. That is not a home occupation but a home based business. The Territory does not have that provision; they have a bona fide employee or relative of the owner. Obviously, we think there should be equity for that.

Senator LUNDY—Going back to the issue of unit title, are you aware of any limitations relating to the Territory's proposals with regard to preventing separate unit titles on dual occupancies?

Ms Pegrum—We only have the information that has now been made available to the committee on what was publicly released. My recollection is that it specifically says there shall be no unit titling in suburban areas under Draft Territory Plan Variation No. 200.

Senator LUNDY—My understanding is that that relates to areas outside 200 metres proximity to shops.

Ms Pegrum—That is correct. It is suburban areas. They define suburban areas as anything outside 200 metres; they define within 200 metres as a general area.

Senator LUNDY—So there would be capacity under the Territory Plan to perhaps define this area differently for the purposes of densities and the ability to create unit title?

Ms Pegrum—No. This area is in excess of 200 metres.

Senator LUNDY—I understand that. But by virtue of the ability to define geographic parameters in the Territory Plan, there would be the capacity or the potential for them to define a geographic parameter allowing unit title for high densities on the State Circle frontage?

Ms Pegrum—Yes. As we have said, if they were prepared to have an area specific variation to their variation—which to us would seem like introducing an anomaly to their intention for the garden city variation—purely to have planning control, yes, of course.

Senator LUNDY—Except that they have already conceded that this deserves special attention. It is a hypothetical scenario.

Ms Pegrum—Our position on that is simply: why go through these acrobatics to achieve what we can by retaining what we already have?

Senator LUNDY—If there were to be a block amalgamation of several blocks—say, three, four, five blocks—what would be the capacity to separately unit title a multi-unit development on each of those blocks? Do you get the idea of the scenario?

Ms Pegrum—Yes.

Mr Wright—My understanding is that the unit titling would be unfettered. If there were 20 units on four blocks and they are amalgamated, the divisions between them disappear and it becomes one block. With 20 units you could operate under the unit titles legislation and define a 20-unit title.

Senator LUNDY—With respect to the evidence heard by the planning institute earlier, whilst they were supportive in their submission of not uplifting this area, retaining designated status, they clearly expressed a view that two storeys were not enough to give the look and feel of—I cannot use their very eloquent words—the kind of perimeter that they were looking to create which was consistent with other aspects of State Circle. What is your response to that? What is your justification for saying two storeys, and are you so against it being three or four or even five? I am playing devil's advocate but I would really like to hear a specific response to that.

Ms Pegrum—It is a question that we have been asked many times by different people, including developers. I suppose from our point of view this is not an approach avenue in the same sense as Canberra Avenue. This is a residential precinct that forms part of the immediate circle surrounding Parliament House and from which the avenues radiate—Canberra Avenue intersects State Circle as a radiating avenue.

This has had a history of residential development that goes back to the initial intentions of the area. In an interesting way, we think it is a rather beautiful statement to have a residential area in that position adjacent to Parliament House. The nature of the residential development over time has been largely two storey and single storey in that area. Our feeling, looking at that and taking into account the overlooking of the blocks abutting it at the back, was that two storey allowed for quality residential redevelopment but retained the garden city character of the existing subject area. As for the belts and braces approach of adding the eight metres from the finished ground level that I described, we do have some discretion with that through the appendices to the National Capital Plan.

The block which is of interest in this discussion is the one to the western side of Melbourne Avenue, which is a single house occupied by one of the diplomatic residences, from memory. To all intents and purposes, because it has a garage below it, the effect of it is something akin to a three-storey building. We have not physically measured it, but we believe it is probably about 2.5 metres to three metres higher than a two-storey development in our current scenario.

So why has that worked? Firstly, it is on a corner block and, secondly, it is a single dwelling surrounded by landscape and the block, in fact, slopes from State Circle downwards across the diagonal so you are taking up the fall of the site. From State Circle, you are looking above the garage line, so the impact of it is very similar to what we are proposing. From my memory, we did not have a storey limitation in the first draft in November but in the public commentary coming back there was significant interest in the height of development in the area. The strong feeling from that public commentary was the two storeys. Once we introduced these additional measures and PALM agreed with them, we went back to those who had put in written comments, and I do not think we had anything but positives in respect of that.

Mr Schultheis—They reiterated them.

Ms Pegrum—It is still a draft amendment but, to date, we feel that on balance the two storeys are about right.

Mr JOHNSON—I would like to flag the interaction between the authority and the Territory. In relation to the five per cent and what you said, that it is effectively a moratorium: did you make any comments or submissions on that to them?

Ms Pegrum—We were briefed on the draft variation 200 on the afternoon it was released to the public. We have not put in a formal submission or, indeed, had it formally referred to us for consideration at this time. Do you mean draft variation 192?

Mr JOHNSON—Yes, that is right. The second part of my question related to the 200, but initially I was asking about the 192.

Ms Pegrum—That was on 6 December 2001?

Mr JOHNSON—Yes.

Ms Pegrum—No. Again, we were not consulted on that. They are not required to consult with us.

Mr JOHNSON—No, of course.

Ms Pegrum—They are required to during the formal commentary period on the variations. They have not formally referred that to us.

Mr Schultheis—I think 192 was sent to us but, as we had draft amendment 39 in process, they were talking about areas outside of the designated areas. The five per cent would have applied to the residential areas in the Territory Plan, so it did not apply to this area and I do not think we had any comment to offer.

Mr JOHNSON—I was just interested if you, in fact, had a response or a position.

Ms Pegrum—I am sorry, I am putting together the dates in my head as we speak. Mr Schultheis is quite correct: in December it was the five per cent rule which had an impact on the dual occupancy. But they did announce an intention to review residential policies generally, including local area plans—or they may have called them neighbourhood plans. It was in May that these additional provisions that define a suburban area came into interim effect.

Mr JOHNSON—I am interested in your comment here and whether you are just letting us know as a matter of fact or if there is any particular inference that we are to draw from it. You say that, while the authority is aware that the review is being undertaken, notice was only given after publication.

Ms Pegrum—Are you referring to draft variation 200?

Mr JOHNSON—Yes.

Ms Pegrum—It is just a matter of fact. Primarily because I anticipated that the committee and the public would be interested in our own processes in association with draft amendment 39, I simply made a statement of fact that, in the same way, we are trying to come to grips with what these new Territory Plan provisions might mean for this particular subject area. I have to qualify here—because of the inferences that could be drawn, and I hope would not be drawn—that the Territory planning agency and ourselves do not have a very good working relationship. This is simply about, in this particular area, trying to find a technique that will allow us to deliver and secure what we believe to be good urban outcomes for an important area of Canberra. At this point in time we think the best technique and the clearest way is to retain what we already have.

Mr NEVILLE—With no sense of criticism at all as to these scenarios that you have given us or the architectural concepts that they conjure up, what do you think of Ms Middleton's comment that we have perhaps let our vision of State Circle slip a little—that Parliament House was not originally intended to be there and now we are dealing with these sorts of things on a piecemeal basis? What is your comment on (1) should we be looking to an even higher standard of architectural grandeur and (2) has the time come for some sort of study or re-planning action in respect of State Circle?

Ms Pegrum—Someone once said that hindsight is the least useful of perceptions, and I do not always agree with that. But it would be a wonderful scenario to go back to the point in time when the parliament was sited on Capital Hill—I mean this quite sincerely—and look at the whole of the connecting areas around there, taking into account the Barton redevelopment area as well as the Yarralumla diplomatic area and, of course, this one. You would do the whole of that context together. As history has it,

the York Park area was looked at in isolation of State Circle. We are currently in the process of proposing an amendment to York Park. The diplomatic areas are largely developed. The school is there.

Mr NEVILLE—I know what you are saying. I suppose you cannot just do State Circle in isolation; you would have to go back some distance. When you look at State Circle, I think there is some validity in what Mrs Middleton says because, quite apart from the need for superior architecture, we have got a lot of concrete asphalt flyovers and some benign grasslands around. Don't we need to have some more dominant buildings to complement the grandeur of Parliament House and the circle itself?

Ms Pegrum—For all of the reasons I have described, we think two-storey residential development is appropriate in that balance. The authority is very strongly committed to retaining residential use in that area—

Mr NEVILLE—There is no inference of that.

Ms Pegrum—and prohibiting serviced apartments. So the question then comes to height and architectural controls. We have become quite prescriptive in this draft amendment. There is room to go further but, if that were the case, I think our consideration would be—and I cannot speak for my other colleagues on the authority—that we would go to master plans and build those complete with development conditions into the National Capital Plan. That is generally considered overly prescriptive and does not allow for consideration on a case-by-case basis. We think we have got enough in there to protect the kind of amenity and presence that the site deserves.

Mr Wright—Mrs Middleton's ideas were ones that we wrestled with during this period for a considerable time. The difference in the sites fronting State Circle—that we are dealing with in this amendment—is that they are all leased and developed, so we are into a redevelopment scenario. The balance of the character has been established by the initial development, and that has been retained both in the diplomatic areas and within York Park, where we have had the opportunity to set controls and manage the design process, we are able to deliver those outcomes.

Our concern has been that we are trying to reconcile good future urban design outcomes with the interface of parliament on the one hand and residential development on the other. The amenity of that residential area is also important. I think it is worth pointing out that, within the whole study area, approximately 80 per cent of the residences are owner-occupied. So the pressure for change is piecemeal. It is largely focussed on State Circle.

What we have to be concerned about is that the policy needs to be able to deliver the outcome. What we have as a two-storey limit is an optimum one and one that we regard as having the least risk in being able to deliver a reasonable urban design outcome. Were the situation different—that is, a virgin site for the whole of that area—the other opportunities would be much more readily available to us and ones worth pursuing.

CHAIRMAN—We have gone well over time. On behalf of the committee, I thank Ms Annabelle Pegrum, Mr Ted Schultheis, Mr David Wright and Mr Stuart Mackenzie for your attendance today. If there are any matters on which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence.

Senator LUNDY—Chair, would it be possible, on notice, for the NCA to provide the committee with a dot-point scenario of what the consultation process is for draft amendment 39 as it currently stands?

Ms Pegrum—We have covered that in the chronology to date.

Senator LUNDY—No, not to date. I understand that. My question relates to the fact that there is a consultation process to which you must adhere and to what degree that has been impacted upon by the fundamental change in intent of the draft amendment 39. What is your proposal under that?

CHAIRMAN—We are well over time, but if Ms Pegrum would like to do that I have got no objection.

Senator LUNDY—I am very conscious of time, but what is your proposed consultation? Are you going to restart the process or do you believe, despite the fact that there has been fundamental change in intent of the amendment, that the consultation process is effectively closed on this matter?

CHAIRMAN—Senator Lundy, we have actually closed this section off. Technically we have to reopen it if you want that to be official.

Senator LUNDY—I am happy for it to be taken on notice.

Ms Pegrum—Mr Chairman, I believe I can answer it now.

CHAIRMAN—Yes. That will be an unofficial answer.

Ms Pegrum—First of all, the processes through to approval are set down in the submission. The intent at this point in time is to wait for the outcome of this hearing and see what statements come forth from that before we determine the next steps. In the event that the general approach is accepted, we would advise formally and refer this to the Territory, as we are required to do. But I do point out that the consultation deals with amendments to the plan, not retention of existing provisions, so we would seek the Territory's advice on the provisions of the amendment as it stands. Then we would have to take those into account and progress it again through to the minister with a recommendation. He or she would then make a decision which may include referral and then would approve or otherwise the draft amendment. If it is approved, within six days of gazettal it is placed before both houses of parliament and has six sitting days for disallowance, in whole or in part.

CHAIRMAN—Thank you, Ms Pegrum.

Ms ELLIS—Thank you, Chair. Can I clarify that that statement is still in *Hansard*?

CHAIRMAN—I think it was unofficial.

Senator LUNDY—What does that mean?

CHAIRMAN—I had closed that session off, but it will still be in the *Hansard*.

Ms ELLIS—Thank you.

[11.53 a.m.]

BOARDMAN, Dr Norman Keith (Private capacity)

DAVIDSON, Mr Donald Carlyle (Private capacity)

O'SULLIVAN, Mr Laurence Gregory (Private capacity)

O'SULLIVAN, Mrs (Private capacity)

CHAIRMAN—I welcome residents from the area concerned. Is there anything you would like to add about the capacity in which you appear here today?

Dr Boardman—I am a resident in Somers Crescent, which is part of the block we are talking about, section 6. I am also immediately behind the dual occupancy which you saw.

Mr O'Sullivan—My wife and I are co-owners of block 5, section 6. My family have had that block on and off for very many years now.

Mr Davidson—I am a co-owner and resident of 21 State Circle, Forrest. I also appear as the sole practitioner for my trading legal firm called WH Johnston Davidson and Co.

CHAIRMAN—Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as the proceedings of parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee, you may request that the hearings be held in camera and the committee will consider your particular requests. As you have each lodged separate submissions with the committee, the committee will proceed with each of you in turn. It might be appropriate if Dr Keith Boardman were to begin the process. Dr Boardman, are there any corrections or amendments you would like to make to your submission?

Dr Boardman—No. I will just elaborate to a small extent and then take questions from you.

CHAIRMAN—Yes.

Dr Boardman—The area under consideration is not as old as one might think. It was developed in the late fifties and early sixties. I was one of the first residents in the area. That means I have been there for over 40 years. As we have heard, it has developed into a prestige area. It has developed into a very distinguished garden area.

I think it is an area which is very appropriate at the moment in proximity to Parliament House.

I strongly support the recommendations of the draft amendment that have been put forward by the National Capital Authority and the presentation we heard this morning. I certainly strongly opposed commercial development along State Circle. This would not fit in with the residential character of the area—not only with the houses on Somers Crescent, which is the street behind State Circle, but also with the diplomatic developments in the area, which are on the other side of Somers Crescent. We have the Austrian embassy and the Swiss embassy and we have a major building in the residence of the Malaysian High Commission. Of course, they do not satisfy your two-storey rule anyway, so they are going to overlook. But one must remember that this is a well-vegetated area. It has some large buildings in the area immediately behind State Circle and section 6. I see the problem that is faced by the authority in trying to see what you can do with the land along State Circle, because it is part of that whole section.

In my submission I supported most of the proposals in the draft amendment, but I did query the increase to 0.6 of a plot ratio if you amalgamated blocks. I am still not clear from the presentation today what increasing to 0.6 would really mean in terms of multidevelopment units. I feel that needs a lot more presentation from the planners as to what that actually means: why do you want 0.6 if you are going to have a mandatory two-storey development? Whatever you do there, evidently it will mean—as it did with dual occupancy on State Circle—an enormous decrease in the amount of vegetation. I think that Senator Lundy has referred to that too.

CHAIRMAN—We will try to clear up that ambiguity in our report.

Dr Boardman—High-rise commercial development has been suggested, but I do not think that is really possible, in the planning sense, on just one part of that section. It would of course overlook the residences behind it very much, and the embassies would be affected too. Even the residences on Somers Crescent would be affected. One is owned by the UK High Commission and one is owned by the Japanese embassy. There is a heavy embassy involvement in the area.

In my original submission to the National Capital Authority, when they put out that first amendment in November 2000, I did oppose the transfer of jurisdiction from the Commonwealth to the ACT on the basis that we do not know what we want to happen there in 50 years time. The present leases were 99-year leases. But I believe that the Commonwealth should retain the right to control the overall development there in 30 or 40 or 50 years. Therefore, I felt that it was not appropriate to transfer control to the ACT when you are trying to visualise what Canberra is going to look like in 50 years time. I have just been reading Paul Reid's book on the Griffin plan and the national capital and how that has been significantly altered already.

I have just one more point and I will finish. I believe that somewhere in the amendments we need to ensure that, when a development plan is submitted, the neighbours should be obliged to be notified. When the dual occupancy went up near me, the first I knew about it was when the bulldozers came in and knocked down the

house. When I phoned the National Capital Authority, they said that under the present plan they were not required to notify neighbours. I believe notification of neighbours of plans should be built in to any amendment that is made. I think that is all I need to say.

CHAIRMAN—Thank you, Dr Boardman. Are there any questions for Dr Boardman?

Ms ELLIS—I just want to take the opportunity to make a comment. The NCA just explained to us a moment ago—and I stand to be corrected on this—that there are no appeal rights.

Dr Boardman—I was not talking about that.

Ms ELLIS—I know that. I am actually getting the opportunity to put on the record that we need to get some clarification in relation to the fact that there is no notification. Is that because there is a conclusion drawn that there is no appeal right? We might get the NCA to answer and clarify that for us at a later date.

Senator COLBECK—You mentioned you are right behind the development. I took your opening comments with respect to the impacts of that to be a little of an invitation to ask a question on that particular development. You did mention vegetation. Is that the key impact that you have seen at this point in time from that development?

Dr Boardman—Honestly, from my point of view and my visualisation, the development is quite satisfactory. It may not be the same from State Circle. I have a tennis court at the back of my block and I have a lot of vegetation between that and my house. I was quite satisfied with a housing development there rather than the potential of commercial development. The owner has landscaped it very well but of course it will take some time for those plants to grow.

Senator COLBECK—So essentially the impact of a two-storey residential development has not been significant on your amenity?

Dr Boardman—The two-storey residential development there has not been significant. I have a two-storey house myself and I have sufficient vegetation, so I am really not looking at the development behind. But I think it is important to stress that the area initially had hardly a tree on it at all. Of course, over the 40 years it has become a really good garden suburb and the street trees have grown to be magnificent.

Senator LUNDY—I would just like to go to your points about consultation with regard to dual occupancy. My understanding is that appendix P of the National Capital Plan requires the developer to consult the owners to check that it occurs. Can you confirm with me the process you went through, if any, regarding complaining about the lack of notification, or whether you have subsequently been given correct advice from the NCA that there is a requirement to consult within appendix P of the National Capital Plan?

Dr Boardman—I phoned the National Capital Authority and was informed that they were not required to notify adjoining owners. The owner who was doing the development did tell us what was going to happen, but there were no opportunities to see the plans. The National Capital Authority were not able to show us the plans; that was up to the architect. I phoned the architect and left a message. I was going to Queensland that week. He never got back to me and I did not have the opportunity to see the plans. So all my information has come when I have asked the owner what was going to happen.

Senator LUNDY—So it has only occurred when you have taken the initiative, and then you were still unsatisfied?

Dr Boardman—Yes, because I know that in most jurisdictions in Australia in local government there is a legislative obligation that neighbours be told about plans and be given the opportunity to see them and comment.

Senator LUNDY—You express a preference for the area to remain within designated status. Obviously you are also presenting a view that the notification requirement should be upgraded. Are you in a position to say what is more important to you—designated status or an appropriate consultative regime?

Dr Boardman—From what I have said so far, designated status and not uplifting it to the Territory government would be my preference. I can see the big advantages in redevelopment of amalgamating blocks. That is the problem when you have a developed area and you want to redevelop it: each block is owned by a different person. I can see the advantage of the amalgamation, provided that amalgamation does not lead to a huge multidevelopment—as was reported in the *Canberra Times* a couple of months ago, as you know, where a development was for some 38 units. I can see the advantage of some of the scenarios that were presented today by the National Capital Authority. I can see their various scenarios, provided they can meet the condition that in developing there should be sufficient profit in them to do so, as the best development for State Circle which would be consistent with the general residential area.

CHAIRMAN—Do you have an opening statement, Mr O'Sullivan or Mrs O'Sullivan?

Mr O'Sullivan—I put in a brief formal submission with attachments.

CHAIRMAN—We have that.

Mr O'Sullivan—In fact I am adopting the comments I had made for the previous submission. In other words, I am saying that the circumstances have not changed but the former NCDC, nowadays the NCA, has changed its position several times. I have the four papers which have been referred to by the NCA. They have changed their mind several times in the last two years. Having summarised my position that way and said that my main argument is in the document I submitted on 1 August last year regarding the previous draft amendment 39, let me start off following up on my friend Dr Boardman seeing it has started off that way. I have also put before the committee

two documents—one a letter from the NCA dated 24 July 2001 and one also from the NCA dated 31 January 2002. Following up what was said—and also what was said by the NCA this morning—I bring them to your attention by way of introduction. Firstly I ask you to look at those letters.

Secondly, as set out in my minutes and as Dr Boardman has said, we firstly knew of the situation when the place next door was knocked down. At the moment, they are building a place next door to our house in Gawler Crescent, Deakin. We had to give written permission for putting an extra garage alongside our dining room, but we were told nothing about that dual occupancy being approved, started or anything. In a letter dated 31 January this year—and I draw it to your attention—is an apology for the fact that, when I complained about the development suddenly being there—and the dates are in my papers—I got a letter dated 24 July. I got that very late, by which stage the whole thing was a fait accompli. The building was knocked down and they were starting with trenches and everything. The letter told me, basically, that they did not have to have public consultation but that I had certain rights to appeal afterwards under the Administrative Decisions (Judicial Review) Act—an act of which I am well aware. I have some cases in the reports about that, but there was no opportunity to use it.

But let me finish with this—going through the letter dated 31 January of this year. Firstly, you heard Dr Boardman say that he had not been consulted. That letter would, in the fourth paragraph, tell you that the applicant did consult the two defined neighbours and attempted to contact me. Quite honestly, to cut a long story short, many phone calls to the architect resulted only in the statement that someone who was involved was going overseas—that was the owner, I presume. He has never come back to me. In spite of the letter written on 31 January saying that certain things happened—'I spoke to Mr So-and-So' et cetera—they did not happen. The first time I met the owner was when I managed to work out who he was. It was just before they first advertised it for sale, about two months ago. He was very polite and showed me over the place. He did refer to Mr Wright's letter, which he knew about for some reason, and said that he did try to contact me through the tenants. I asked the tenants, and they said they had no knowledge of him. He did not try to get me through the phone book or through my agent. In other words, there are significant incorrect statements in that letter dated 31 January.

But the most significant thing about it is that these things happened in May-June. I set out in my material the terrific speed with which (a) the land was sold, (b) an approval for the development was given—within a month, and (c) work commenced on the development. Only then did we begin to get any correspondence, and that was left until it was a fait accompli. Sir Lenox Hewitt summed it up very neatly, saying, 'This would look good on the file, but we know it is not correct.' That is the way I regard that letter. It is significant, and I am only raising this because I did not raise it before for the simple reason that I did not know it would get the attention it has had this morning from the NCA.

I had prepared an answer to that letter of 31 January which, as you will note from my minute, came to explain a phone call I had from the *Canberra Times* telling me that the NCA admitted that they made a mistake in the letter of July last year. They

did not tell me that; the *Canberra Times* told me. The letter dated 31 January merely confirmed what the *Canberra Times* had told me—a most unusual way of performing.

For your information, because of what was said to you this morning, amongst the things that I did in order to respond to that letter—and decided it was not worth doing—was the fact that I went into the law on the subject. I was told about a case Idonz Pty Ltd v. the NCDC; Serton Pty. Ltd v. ADC Properties. This was back in 1986 and it had some very distinguished judges: Fox, Woodward and Everett. That was one case from which the then NCDC, and now NCA, got their power, their right to operate directly without all the requirements that every other authority of a development nature in Australia has. It is very clearly set out there that they have special rights because of the National Plan. They have special rights because they have a special job.

I doubt that it was designed to deal with the question of whether a dual occupancy was put on a block or not. It was designed to deal with parliament houses on hills, major roads, major buildings and major new developments in the Territory Plan. These are things for the National Capital Development Commission to deal with, and they did. I knew Sir John Overall, and I had great respect for him. It is not like that any more. One of the judges in that case made the point that an expert body—and do not forget that Overall had a worldwide reputation, and before him there had been international experts out to help advise what was going to happen about the National Plan—with the sweeping powers of the NCDC does not have any commitment to the landowners' and occupiers' adjoining properties in deciding applications for development. He went on to differentiate it from town planning authorities, elected bodies or independent tribunals, which is what may be the case with the NCA now.

The fact is that—and I am summarising this whole area—in the views of lawyers at that level it was not intended to be a way of putting through a quick development which tactically suited someone in a particular authority and which ignored the next-door neighbour—that is, Dr Boardman—and me. I do not know who else was in it. I see there is a problem of time, and I would like to address just a couple of points.

CHAIRMAN—Go ahead.

Mr O'Sullivan—If anyone has any questions, it might be different.

CHAIRMAN—We will have questions, but you go ahead anyway.

Mr O'Sullivan—In my main draft, I go through the minutes of 1 August last year. My argument has not changed since then, because it was sound. I earlier recommended that the NCDC—and, later, the NCA—hand over local planning problems of this nature to the Territory planner, because they were not used to dealing with them and it was not their business. So I was not surprised at that proposal; it was something I forecast years ago. They may get it wrong, because they do not do this sort of residential development very much, although they did of course in this particular case.

Our block was bought originally in 1958. There was nothing opposite. If nothing is done to that stretch, the whole of the parliamentary zone looks the worse for it. I submit to you that nothing you have heard today—except maybe from the planning professionals—changes the point that the NCDC have not come up with any option for the future development of those properties. All they have said is: what was a residential purposes clause originally has got to stay. They have not got anything else in mind, and therefore they are talking about what is going to happen. They do not want change to happen; they want it to stay the way it is. That is not an answer to a genuine town planning long-term problem for a critical part of the national scene.

The Sydney equivalent to 'opposite Parliament House' is in Macquarie Street. It does not have a problem with the front lawn et cetera. It should not happen. After all the other considerations, I hope this occasion results in a final decision—as I pointed out in my submission several times. There should be appropriate decision on use at the professional level for the special location of this land. If you do not mind me saying so, you can—if you want to—go down and have look at it. It is only just down the hill. Dr Boardman's house is in Somers Crescent at the back.

I have drawn attention in my minute to the definition in the draft amendment before you, and at the back of that draft amendment there is a definition of the residential amenity problem. It is bare and very arid. I draw your attention to what I wrote last August on the residential amenity—and I refer to it in my covering submission. The type of pleasant residential amenity which is in Somers Crescent cannot be placed or repeated in any way with these houses on State Circle.

You have seen the proposed dual occupancies—and we had never seen them before—and four in a row is one of the proposals that has just been put before you. Work out what happens with the traffic coming out of them in the morning into State Circle. If you read my August 2001 submission closely, you will see what I say about the traffic flow. It is a 50-kilometre area down Hobart Avenue and Melbourne Avenue until they get to State Circle, and there it is 70 kilometres an hour. That is why we cannot get families to stay in the place. As I tell you in my minute, we have had 10 months of tenancy in the two years since we lost our last group. If you want to go around a bit further, you will find that National Circuit has a 60-kilometre limit on it. So you have a 60-kilometre area, a 50-kilometre area, and then you come to State Circle. The national planners are unable to change the nature of the problem that has been created there by the four lanes, which means that it can only be something like a 70-kilometre main thoroughfare. It is no longer a residential area. There is no way you can repeat the ambience of Somers Crescent on the other side of those same blocks.

I do not know what future market values will be. As I say in my minute, No. 15, the building with the dual occupancies was only recently completed and as of today no sale of either block has occurred. The developer tells me that he intends one block for himself and the other block for sale. That is a good capital gains tax limit. They still have not sold it. They rushed that thing through from March to July last year and then stopped doing anything on it. They only recently got to the stage of putting in the lawn that was referred to and a few things out the front. The fact that they have not yet made a sale may mean—this was in my assessment in my August submission—that it was no longer suitable as 'residential' for the purposes clause, and it may not be

suitable until the overall plan is decided to put something there that is suitable for the national capital facing Parliament House. When that occurs, by all means you might get appropriate development.

I would like to discuss how many cars are going onto the drive from those four dual developments. I was not prepared to speak about this. There is a three-storey development near the Kingston shops, opposite the post office. You get into them from the back street. They do not try to go out into the main street. If there is a development of a residential nature on State Circle, I hope it is something like that. Quite frankly, it may be something that should be publicised by the NCA. If they cannot think of a proper use, at the level of professional competence required for future planning, they ought to find out whether somebody else who is going to make a buck out of it will do it. In the meantime, I do not accept this reliance on putting in a number of dual occupancies—there is a fair bit of money in these dual occupancies in the central areas—and the idea that that is an answer to the problem. I do not accept this. We just have not got proper money out of that block. We have been subsidising it. I will give you some of the figures from my papers; we could give you more if you wanted them. Sorry to take so long.

CHAIRMAN—That is okay, Mr O'Sullivan. Did you have anything to add, Mrs O'Sullivan?

Mrs O'Sullivan—Great sympathy with the last sentence on subsidising.

CHAIRMAN—We will ask Hansard to put that in bold print, shall we?

Mr NEVILLE—You have answered one of my questions: who would you prefer to control it? Obviously, you are an ACT supporter on that issue. What would be your vision for the frontal part of State Circle? Presumably you are quite happy with the rest of the developed area. What do you think should be there? Do you agree with the two-storey suggestion?

Mr O'Sullivan—The two-storey suggestion is ridiculous. It should be able to go higher than that. Dr Boardman has two storeys in Somers Crescent at the back. I have given certain opinions over the years. I thought early on that commercial was desirable. Sir Lenox Hewitt and I worked in conjunction on a lot of things since 1957—before some of you were born. The fact is that he had plans. I have not tried to push a particular idea for the last four years. I am happy if they think of something which will mean we do not have a block there at the prices I say in my documents.

I would like to think that, whatever it was, it was not going to be a repetition of past errors. Irrespective if there are changes to the back street a bit—and I do not think it will change it much—it should be quite different on the front. For people who live in the blocks in State Circle and do not have children it is okay: they are hoping there will be an increase one day in price and they will sell. I think that there should be an opportunity for lobby groups and national bodies to be in there. I understand our tenant, who has only been there for a couple of months, is doing things like helping Mr Beazley to keep his weight down.

I have got off the track. I have discussed this with Sir John Overall about two years ago before he died. I have a long association with him as with Sir Lenox. At a social event, where we used to talk, I said, 'I am having no end of trouble with your old mob. They still talk about residential development there.' I am not going to say that he said anything positive in the way of what was going to happen . I said, 'Is there some land planning principle that I have never heard of which means that they have to stick to a residential purposes clause, as happened in Northbourne Avenue when I first came here in 1951?' He did not come out positively on that, but he was puzzled that it was still an issue. He did not say, 'I wonder what else I put there?' But as a planner, to my mind, he was sympathetic to my criticism of continuing the ancient purposes clause.

Senator LUNDY—I would like to go back to your issues relating to the consultation process with dual occupancies. In part, given that you did not pursue that final complaint about what you say are inaccuracies in that letter, is it your view that regardless of what happens—whether it stays designated or it is uplifted—there needs to be a far more comprehensive consultation process built in?

Mr O'Sullivan—I do not know what you mean. Are you asking whether I thought that should be more intensive consultation when there was none?

Senator LUNDY—I take your point. I guess what I am saying is that, notwithstanding the fact that you were treated with contempt by the authority—and that is my observation—even if the processes of appendix P had been adhered to, what I am hearing from both Dr Boardman and you is that there should be a far more rigorous notification process if any developments were to go ahead to be fair.

Mr O'Sullivan—Actually, my final point in my latest submission is, 'If the National Capital Authority continues to "control" purely "residential" leases, it should be required to comply with public notification procedures. This would be similar to Territory Plans which are also common elsewhere in Australia.' I have given you something I had not originally intended—a quote from a case which I can give the details about. You have three very senior judges dealing with that, saying, 'Special powers for the NCDC and NCA, but intended for their special problem.' This is different.

Senator LUNDY—Not intended to manage residential property.

Mr O'Sullivan—Not intended for dual occupancy that is right onto State Circle.

Senator LUNDY—Could we have that document tabled?

Mr O'Sullivan—You mean the Federal Court document?

Senator LUNDY—The Federal Court document.

CHAIRMAN—Is it the wish of the committee that the document be tabled? There being no objection, it is so ordered.

Mr O'Sullivan—There are my pencil written comments on it which were intended to reply to the NCA letter.

Senator LUNDY—Finally, the issue of amalgamated blocks and block ratios has been subject to discussion this morning. I know you have heard some of that discussion. What is your view of the prospect of an amalgamated block development and an increased plot ratio to 0.6 or perhaps beyond?

Mr O'Sullivan—One of my other points is that I think there should be a minimum amount of detailed a priori advice. I did not use the word 'a priori' but you know what I mean by a priori advice—something that is in people's minds. They set out, 'This is what should be in it,' but do not define it. There should be no detailed limitations on proposed developments such as the earlier purposes clause included, such as are included in the Territory and national planning—you have heard about that—and those in the present draft amendment. I think: don't let a priori decide those things. If it can be put out for something that is appropriate use for that special location, then okay. You fit it in so that it is not too disadvantageous to the people at the back or whoever else. As I said to you before, the traffic is at 70 kilometres an hour. You are not going to get any families settling in there.

CHAIRMAN—Thank you, Mr O'Sullivan. I now turn to Mr Davidson. Before we ask you some questions, Mr Davidson, do you have a statement that you would like to read to the committee?

Mr Davidson—Yes, I do, Mr Chairman.

CHAIRMAN—Please proceed.

Mr Davidson—I will make seven points. The first point is that if I were what they call a neighbour with a mutual boundary with regard to this controversial dual occupancy on State Circle, I would not be contacting the National Capital Authority. There are two additional remedies: one is the writ of certiorari and the other is the writ of mandamus. I would see them in the Federal Court and the court would hear about why it was that they did not have proper control measures to make sure that the applicant had contacted the neighbours. And I would not have waited; I would have been in court the day after the fences went up. So there are two additional remedies, and I would not have fooled around with the Administrative Decisions (Judicial Review) Act, full stop.

On the second point, with regard to unit titling, I differ with Mr Wright. I will point the committee to something that I typed. It is here in my submission on page 3, paragraph 15. The key word is 'will'—will not permit. That is mandatory; that is not discretionary. The National Capital Authority has no right to give anybody unit titling under dual occupancy at the present time, and that has to be adhered to. That is the law in the plan. I think that is why a number of us—and I have pointed that out in my subsequent paragraph—have not done dual occupancy with unit titling because we knew that we could not get unit titling. The only other way you can get around it is with company title. The problem with company title is that people cannot yet get loan money because of the risk of security being shares. We have long passed the day of

company title. It has been unit title for some time. That is all I would like to say about that.

The third point is with regard to notification. In my submission, I pointed out that I was the chairman of an association of individuals who made a submission to the National Capital Authority with regard to use change. When I was approached as to what my thoughts were on this and how I would participate in it, there were certain ground rules. The first ground rule would be that it would be the good neighbour policy and we would include everyone—all 16 blocks—the eight blocks that face Somers Crescent and the eight blocks that face State Circle in Forrest.

The question may be asked: why didn't we include the Deakin side? The answer to that is: for one reason only—it was a confined area. There are no homes, except the Austrian Ambassador's home, that face the houses on Somers Crescent. We have a wide verge on Hobart, between the preschool and the homes, and we also have a wide verge on Melbourne Avenue—with regard to the homes on the Forrest side and the homes on the Deakin side. It was a confined precinct.

We had an association meeting. Everyone was invited. Those who came made their submissions. I have given you the submission that we were able to present, as agreed between the National Capital Authority and the association, on their behalf to the panel of five eminent people. They then invited the committee people and me to hear what their decision was, in August 1989. Why did we go through all this? It was because for a number of years we have been living in a state of uncertainty—and, more particularly, since Parliament House was built on the hill.

I have lived on this street since February 1977, so I know something about traffic. I also know something about change. I can tell you anything you would like to know—including the change in traffic pattern, would you believe, since we have had the Super V8 car races for the last three years. People have changed their traffic pattern and instead of going State Circle around to Kings Avenue by Flynn Drive, they have now found an alternative way of doing the loop and come in by State Circle to go to that area that has been built for a number of years in Barton. We live with it every day; we live with it every night. When there are late night sittings of parliament, we have traffic until midnight or one o'clock in the morning. When they are not sitting, we now have the people who want to do V8 car racing at three o'clock in the morning around the entire State Circle when the coppers are not around.

The next thing I want to talk about is appendix M. Appendix M, clause 3 is very interesting. It says:

A residential flat building or medium density dwelling may be erected on those Crown Lease lands where a covenant has been made between the Commonwealth and the lessee permitting such erection.

When the panel handed down their decision—confirmed by a letter from Mr Wright of 8 December 1999, which you have, annexed to my submission—they allowed medium-density housing on its merits. Appendix M allows it. Let us look at the lease clause. It says nothing about single-dwelling residences or units; it says 'residential purposes only'. Thus we could go and move forward.

I will give you an instance, because it was not very well highlighted in what Ms Pegrum had on the screen in scenario 1. It has been very interesting, over the years, that since the early 1960s, Sir Lenox Hewitt saw this. He built a two-storey complex that has four units. It has sat there since the early 1960s, and this is permissible—a four-unit complex. So there is no difficulty with regard to that, and they can unit title it because it is not dual occupancy. No difficulty.

Just for clarification, Senator Lundy: residents initiated the sale of their properties. They are not sold yet; there are options. I am the one who initiated it. I contacted a real estate agent when I had that information and I said, 'Remember one thing: whoever you find as a developer, he must under all circumstances consider medium-density housing on its merits, which is very, very difficult because you are sitting in a key area.' We, the residents, initiated it; it did not come from a developer or developers. I can tell you right now, Senator Lundy: there was more than one developer who faded away very quickly. But we all stood together and we are united; I can assure you about that. Anybody else who wants to come in can also come in.

Another thing: when I found that the fences went up for the dual occupancy on State Circle I immediately went to the land titles office. I got the name and address of the owner and I wrote to him because he was a new purchaser. He was not a member of the association. I told him, 'Before you start on anything, we also have a letter,' and I enclosed it. 'Medium density housing will be considered on its merits. If you care to join, call me.' Silence; nothing further. Fine. I do not care; let him go. It does not matter to me. But at least he was notified and he was informed. I believe in that principle on both sides of the fence.

The next thing is specifications. No, I am not in favour of it and my submission tells why. I will tell you the background to it. The minute I received this revised draft amendment 39 I contacted my real estate agent and said, 'I want to know from the person who wants to develop this property how it will affect my wife and me.' I do not have a clue about plot ratio. Do not ask me any questions about height, site coverage, two storeys, one storey. I am out of my depth in it, but I contacted my estate agent. He contacted the proposed buyer. I said, 'I want to know how these specifications affect the overall situation with regard to the sale of this property as opposed to what went before.'

The answer came back like this: the developer himself had independent advice—and you will probably hear about this further in the afternoon—that it will be impossible to have medium density housing under those specifications, but they are quite prepared to work with the performance specifications which were set out in the former draft. So where does that leave us? It leaves us with dual occupancy and no unit titling. It leaves us with medium density housing. It leaves us where I am nearly 65 years of age. I want to move on, and I cannot do anything with my house, which was built before metric and will cost me between $70,000 and $150,000 to upgrade—and who is going to buy it?

Yes, I raised a family: three lovely children who went to Forrest, Telopea and Narrabundah schools. That day is long gone. I am afraid we are looking at empty nesters at the very least on State Circle, and perhaps on the back blocks too. It says

you can have all of section 6 as medium density housing. It does not distinguish between State Circle, and this is what we have been commenting on.

Now the vision: as far as the vision is concerned I think the houses will go down and down and down. I do not see any way in which many people will upgrade them. Second of all I think we have been hard done by over a number of years and I will give you three instances. The first is that when they started blasting on this hill for the new Parliament House we had three people come by. They said to Mrs Davidson and me, 'The landscaping in front of your house is not suitable for the new Parliament House. We are going to take a trip around the world and when we come back we are going to completely relandscape your yard in the front and all of the others.' I said, 'Be my guest, you can have at it. Do whatever you want.' That is the last I saw of them.

CHAIRMAN—They had their trip, I suppose.

Mr Davidson—I guess they did, because I have not seen them since! Second: $380,000 was spent across the street on sprinklers and lawns on that verge that separates Capital Circle from State Circle. No water—weeds. I have been continually calling the Department of Urban Services, saying: 'Please cut the weeds or we might all perish in a fire in the summer.' So that is how they treat us with that.

Now they say that State Circle is a prominent road. Yes, it is, and I will tell you why. First, the Governor-General travels it. How does he get from the airport to his home without going along State Circle? He has to come up Kings Avenue. Secondly, the Queen of the Netherlands has been along when she went to visit the Governor-General. The King and Queen of Thailand have been by, and so have Queen Elizabeth II, the Queen of Australia, President Bush—the first one, not the second one—and Bill Clinton. So we have seen a good many of them come along that road over the years, and what do they see? A median strip that does not have a blade of grass on it. Even poor old councils in Sydney put in some kind of planting. We have had nothing over the years. So what do we do? What is our hope? Now we are beset with this uncertainty again, and I just do not know where we will go. But it is creating quite a bit of consternation to us.

I have made a submission with regard to my home occupation as opposed to home business. I have given the committee a redraft of what I think might be appropriate for M and N. I think the authority could live with the criteria that have been set down by the Territory. Let me put it this way: look at clause 2 in appendix M at the present time. It says that the application is to be made to the ACT. When I started my practice at home, I made my application under the old section 10 of the City Area Leases Act, which has been repealed. I made it for three years. In the third year I got a letter from the Territory. 'We have changed; we have now split. We have home occupation and we have home business. If you meet the home occupation criteria, forget it—we don't want to hear from you anymore.'

I am certainly happy that I kept that letter because I knew that some day somebody may prosecute me. The standards they have put for home business for the Territory and also what they have put in appendix N is that there shall be only two home

businesses in each section. I do not know if there are two other home businesses that have been approved, but I will take very grave exception if this passes and I am out of my practice in my home that I have been in since 1991. I have always met the home occupation criteria, and I have kept abreast of it. It has been changed marginally over the years by the Territory but the home business has strengthened, and I have all documentation on that if you would care to have it.

CHAIRMAN—Thank you, Mr Davidson. Can I ask members and senators to bear in mind the time in phrasing their questions.

Ms ELLIS—Thank you for your presentation—all three. Mr Davidson, how many households are represented when you talk about the Forrest Section 6 Redevelopment Association? There are 16 blocks.

Mr Davidson—We consider that all were represented. Some would come to the meetings and some would not. Some would give their apologies. But we carried on and we always kept all the correspondence flowing to all 16, even though they did not attend. We gave them the agendas, we gave them the correspondence and we gave the final result. So they were fully informed all the time. Of those 16, at the time that the association was representing them 10 were owner-occupiers; one was an investor; one was technically an investor—that is that one on the corner, the one that I referred to earlier with regard to four units; and three of them are owned by embassies but are used for staff purposes. Of these, two are on Somers Crescent—the Japanese and the United Kingdom—and one is on State Circle—the Fijian. They have not occupied that house continuously for a number of years, ever since the difficulties with regard to the government in Fiji.

Ms ELLIS—The domestic situation.

Mr Davidson—Yes.

Ms ELLIS—That is fine. Thank you.

Dr Boardman—Mr Chairman, I seek the permission of the committee to table a letter to Air Marshal David Evans, the Chairman of the National Capital Authority, in relation to this consultation of the residents.

CHAIRMAN—Is there any objection to Dr Boardman tabling the document? There being no objection, it is so ordered.

Senator LUNDY—Do you concur with the view Mr O'Sullivan expressed—I think you do but I am seeking clarification—that the amenity that that strip facing State Circle provides to residents and the fact that there are driveways going to the street is no longer appropriate for that precinct?

Mr Davidson—It may not be so far as single dwellings are concerned. Let us put it this way. If you have a single driveway out to State Circle, you are risking big problems. When I moved there in 1977, I immediately requested permission to have a circular drive and that was granted, so I had two accesses. The gentleman next door

perhaps four years ago did the same. Mr O'Sullivan's property has two drives. There has always been one drive at 15 State Circle. The Fijians have a circular drive.

Senator LUNDY—A circular drive means you can actually enter the traffic nose first, which is safer. It is a safety issue.

Mr Davidson—Yes. The way the traffic used to be on State Circle, there were three lanes of traffic on our side. There were always two lanes of traffic on the other side. However, a gentleman on a bicycle was hit and killed by a woman and she unfortunately ended up in my front yard at the time, so they have solid lined the near side lane to the kerb. That has been that way for a number of years. As far as my clients are concerned, they would not risk parking on the street; they just come in on the circular drive. I call that sort of a dead lane.

Senator LUNDY—Do you have a copy of appendix M that you are able to table for the committee?

Mr Davidson—Yes, I can give the committee this copy. By the way, I checked all of these appendices at the National Capital Authority library one week before I made my submission to make sure that they were up to date.

CHAIRMAN—Senator Lundy has requested that the document titled appendix M be tabled. Is there any objection? There being no objection, it is so ordered.

Senator LUNDY—To return to the issue of dual occupancy and unit title, I want to clarify the situation here. You are saying that it is not possible to have a unit title on a dual occupancy under law but in fact under the law it would be possible to have unit title on a multiple occupancy development.

Mr Davidson—That is correct, because there is nothing in the plan that addresses that question. It is silent. So with silence I would say it is permissible.

Senator LUNDY—Do you believe that the current proposed amendment, which clearly favours dual occupancy style developments over perhaps other styles in the way that it is expressed and plot ratios and so forth, is an appropriate development for that precinct?

Mr Davidson—For the precinct. Section 6?

Senator LUNDY—No, I am talking about State Circle frontage.

Mr Davidson—It is a difficult question to answer because I have proceeded along the lines that it will be medium density housing.

CHAIRMAN—You could take it on notice if you wish to, if you want to give it some thought.

Mr Davidson—Yes, I would like to give some thought to that, if I could. It is difficult. It is trying to realise what you have, and I do not think that anybody in this room would say that they would buy a house on the assumption that they are going to lose money in the future. The authority has always said, and they have written to us, 'Whatever you have, make sure you get the best out of it,' and that is exactly what we have done. I would say medium density housing is probably better because we, the landowners, benefit from the medium density housing use. The developer benefits from developing it and selling the units. He gets his profit from that. We get our profit from releasing it to the developer. If I sold my house for dual occupancy—the one at 15 State Circle went for $650,000 and the person who sold it bought it I think about five years previously for $395,000. But you will get a lot more under medium density.

Senator COLBECK—Mr Davidson, you might not be able to answer this, but the NCA might be able to give us some information if you cannot. In paragraph 15 of your submission, you talk about subdivision of a block into two parcels not being permitted under the policy. Is subdivision of a block a requirement for a dual occupancy?

Mr Davidson—No. You just have two dwellings on the block. But you have to subdivide the block in order to get unit titling.

Senator COLBECK—Or strata title, or doesn't that exist here?

Mr Davidson—It is the same. The name of it in the ACT is unit titling, and I believe that is because of the fact that we have leased land. I believe it is strata titling in all other states, or all other jurisdictions.

Senator COLBECK—My experience of strata title is that the block remains in the whole but the property goes with the title.

Mr Davidson—I will just clarify that. It used to be that we had three or more units on one block and there was strata titling, but now they have reduced it to two you would have a subdivision.

Ms ELLIS—It might be useful, Mr Chair, if the committee sought a simple clarification from the authority on this terminology: single title, leasehold, dual title, split title and so on.

Mr Wright—Given the time, can we take it on notice?

CHAIRMAN—On behalf of the committee, I thank Dr Boardman, Mr and Mrs O'Sullivan and Mr Davidson for their appearance here today. If there are any matters on which we might need additional information, the secretary will write to you. Your will each be sent a copy of the transcript of your evidence, to which you can make editorial corrections. May I invite you stay for a modest repast that has been prepared if you so wish. Before we call the next and last witness, we will adjourn for five minutes to allow us to have lunch on the run, as it were, and some of us have a long way to go.

[1.09 p.m.]

DRUMMOND, Mr Richard James, Director, State Circle Developments

CHAIRMAN—Welcome. Is there anything you want to add about the capacity in which you appear here today?

Mr Drummond—The company I am a director of has an option over five blocks of land on State Circle.

CHAIRMAN—Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

Mr Drummond—No.

CHAIRMAN—The committee prefers that evidence be taken in public but if you wish to give confidential evidence to the committee you may request that the hearing be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

Mr Drummond—Thank you. As a developer, we seek clarity at two levels. One is, who is the referee, who is going to be the consenting authority? The other is, what are the rules by which a development we are looking to submit can be measured? I think this committee has the challenging job of in fact determining those two matters. The outcome of your deliberations will affect the built form that will be along State Circle for the next 30 to 40 years. It is our contention that the amendment as it is currently proposed, irrespective of who the consent authority is, will lead to an outcome that will see the construction and development of dual occupancies along the whole length of State Circle, that there is not sufficient incentive, that the controls are too prescriptive to allow any reasonable form of medium density.

When making its determination, we would like the committee to consider a number of issues. I think some of those have been addressed most eloquently by the planning body, by the Institute of Architects and also by the residents. But I think at a holistic level we would like the guidelines to be robust and to be performance based rather than prescriptive, which will allow and cater for future growth of the national capital. We believe that whatever planning controls are set should be sufficient to ensure there is a high standard of built form that enhances the significance of the precinct. In relation to who is the most appropriate consent authority, we concur with the position of the National Capital Authority, that is, that they should be the consenting authority.

In terms of what is the most appropriate land use, whilst we as a developer would benefit more greatly if there was an ability to put offices in the area, we concur with

the view of the National Capital Authority that in fact it should be retained for residential uses. I would make the point, as there seems to be a concern from the National Capital Authority that medium density development could be used for serviced apartments, that I think that can be controlled by simply denying people the right to operate serviced apartments in this precinct.

In terms of the planning guidelines, we are at odds with the position adopted by the NCA. We believe that the guidelines should be performance based and not prescriptive. We are concerned that if the guidelines are too prescriptive, and we believe they are, you will in fact get an unintended outcome, and that unintended outcome in this particular case will be dual occupancies.

We believe that this precinct, especially State Circle, should encourage medium density residential development and that it is possible, using best practice urban design principles, to govern and control that outcome. That can address issues such as landscape, setback, amenity for neighbours and traffic and access. Many of those issues have been raised by people who have spoken before this committee today. In our view, you do not need to put plot ratios in place, and you do not need to impose height restrictions to control good urban design outcomes. That view has been supported by RAPI and by the Institute of Architects.

We also support the views put forward by the residents association. There are equity issues involved with their situation. I recommend that the committee look at those closely. I reinforce what Mr Davidson said—that the financial benefit of this amendment flows initially and immediately to the residents; it does not flow to the developers. The benefit we obtain is the right for future development opportunity. We make our money out of the new built form; we do not make our money out of the existing built form. As I said at the outset, our concern is that a consequence of restrictive planning guidelines as proposed is that you will end up with an outcome that you may not want. It is our contention that the planning controls, especially as they relate to plot ratio and heights, will promote dual occupancy development and will not encourage multi-unit development.

As an aside, I work as an independent consultant to a number of planning authorities, one of which is Planning New South Wales. I have recently been looking at medium density opportunities in Sydney, particularly in Marylands and Maroubra. In many cases the plan, as conceived by the planner, looks good on paper and looks as if it will provide a great outcome. However, when you start applying some numbers to it, it can show some inconsistencies or it can show something as basic as the plan will not work. In this particular case, in our submission we have shown clearly that, under the current guidelines as a developer, we would make more money with less risk by doing dual occupancies. As I said earlier, we see that as being the lowest form of development, and we think a more appropriate form of development is medium density. I suggest that the National Capital Authority would also support that contention.

In our submission, we engaged and submitted for consideration of the committee an analysis undertaken by an eminent firm of town-planners and architects from Melbourne. We appointed them because they have had substantial work involved with

medium density, and they do not have a bias when it comes to Canberra and would approach this totally independently. We submitted that to show that all of the elements the National Capital Authority is looking to see occur in this area can be provided in a medium density development, save that the prescriptive controls of height and plot ratio would restrict the size of it to a point where it is uneconomical to proceed with it. We would make more money, with less risk, with dual occupancies. Unfortunately dual occupancies are not a built form that we think is a good outcome, especially on State Circle.

One other point that was made by the Chief Executive of the National Capital Authority was that there is an ability to move beyond the prescriptive controls that would be established and that there is room within the National Capital Plan for this to be considered. Our concern and our experience in the past is that, whilst that may be the view at a senior level within planning organisations, when it comes to implementing it, the particular officer whose career and promotions may depend on it sticks only to the black-letter of the law. In most cases, they are reluctant to move beyond it.

In our experiences with the National Capital Authority in other areas, we have never moved beyond the prescriptive controls or the controls as set for developments. So we would prefer that, rather than there being prescriptive controls with someone having an ability to interpret beyond them, there be a set of performance based controls which can give rise to good built form.

In closing, I would say that, where the consent remains with the National Capital Authority, they have almost a power of moral suasion because they are the ultimate consenting authority and there is no right of appeal. A wonderfully robust design process does lead to good outcomes, where good design is discussed and is able to be promoted and where outcomes based on quality actually arise as a result of their involvement.

Mr JOHNSON—Mr Drummond, can you elaborate on the issue of serviced apartments? My colleague Mr Thompson unfortunately had to leave, and he also had a query on this. I do not quite follow the issue, which was raised earlier.

Mr Drummond—I was responding to a comment made by the Chief Executive of the NCA. If there is a concern about allowing serviced apartments to operate as a business in that area, we say that that can be controlled by a ruling that strictly prohibits the operation of serviced apartments. Typically serviced apartments are associated with medium density development.

Mr JOHNSON—I am not fully persuaded that they would be a problem.

Mr Drummond—If the committee shared the view of the National Capital Authority that this area should not have serviced apartments, we would not have a problem with that. That can be controlled by a statement to that effect in the amendment rather than coming up with planning controls that may restrict a multi-unit development that would be able to be used as a serviced apartment operation as well as long-stay residency.

Mr JOHNSON—It comes down to the format of a serviced apartment. It can still be a very limited scope.

Mr Drummond—Yes. It is not our intention to develop these five blocks for serviced apartments. We see a higher and better use as long-stay residential, and we believe that there is substantial demand in Canberra for high quality residential developments close to Parliament House.

Mr JOHNSON—Can you elaborate—at least, for my benefit—on the 'performance based' phrase that you used?

Mr Drummond—'Performance based' is a term used by planners when they talk about best practice urban design outcomes. It is a matter of making statements as to the architectural intent, landscape, setbacks, how the elevations between different floors will work, roof types and the setbacks from rear boundaries to ensure that there is no or limited overlooking between the back of one residence and the backyard of somebody else's residence. It could be stipulating that living areas should be to the front and bedrooms and bathrooms to the back of buildings. That is performance based. It talks about solar access, cross-ventilation and energy efficiency. All these become part of a list of performance based guidelines that any proposed development must adhere to or exceed.

Mr JOHNSON—That leads me to my next point. You used the phrase 'performance based' on its own and, on the second occasion on which you used it, you added the word 'controls'. I am wondering: where was the mechanism for the controls? Was it going to be self-imposed?

Mr Drummond—No, the controls can come through the areas such as setbacks. The setbacks from front boundaries, side boundaries and rear boundaries will give you, by definition, a building envelope. What can happen within that building envelope gets controlled by things such as height planes, solar access, light, the oversighting on neighbours et cetera. All of that starts controlling what can happen within that envelope. There are also requirements for articulation, design, which will start bringing you back from that. Because it is performance based you have to exceed each of those guidelines. They typically chip away at the potential development envelope by which you can build it.

Mr JOHNSON—But that is very different from your views about controls of plot ratio, height and setbacks that you made previously—that you do not agree with controls.

Mr Drummond—We agree that they should be performance based controls not prescriptive controls. Prescriptive controls say, 'This is the plot ratio and thou shalt never exceed it.'

Mr JOHNSON—So there should be some sort of professional discretion on the developer's part?

Mr Drummond—Not on our part, but we have the right to interpret those performance based controls. At the end of the day, the arbiter of those is the National Capital Authority, who is staffed by very competent urban planners, planners and architects and who have the ability to interpret those performance controls to protect the integrity of the plan and to ensure that there is a good design. We are happy to go through the process—it is not a negotiation—of submitting our interpretation of those controls to be measured against what the National Capital Authority sees as being an appropriate interpretation.

Mr JOHNSON—Don't they do that already with their prescriptive—

Mr Drummond—With prescriptive controls, there is a limit—that is as far as you go; you cannot go beyond that. We are saying that, in this particular area, if you set the prescriptive controls at a plot ratio of 0.6 and you set the height at eight metres, you will not get medium density development; you will get dual occupancy development. I do not think that is a good built form.

Mr JOHNSON—I guess it comes down to your ultimate goal of trying to promote medium density development.

Mr Drummond—If the National Capital Authority want to promote medium density development in this area—and I understand that has been stated by the authority and it has also been stated in writing to the residents—a better way of achieving that is not through prescriptive controls but through performance based controls.

Senator LUNDY—I refer to page 7 of your submission, and 6(f) 'Existing landowner rights', and also 6(g) 'Precedents'. My reading of your submission on existing landowner rights implies clearly that, prior to the changes to amendment 39 that we now know occurred during that period between December 2001 and January 2002, you had initiated and entered into at least a commercial arrangement based on options with the lessees of the section 6 redevelopment association. Is that the case?

Mr Drummond—It was with individual landowners, not with the association. A number of options were entered into in December last year. The fifth block option was taken up in late April.

Senator LUNDY—In December, when the earlier options were taken up, was there any awareness on your part, or on behalf of those residents, that a change was being considered or was indeed imminent with regard to draft amendment 39?

Mr Drummond—We were aware of the original draft amendment 39, which was done in November 2000. We were not aware that there were to be any subsequent changes—there were some rumblings, but nothing was officially stated. I should say that the proposal that we attached to our submission, in our view, would be permissible under the controls as set out in the November 2000 amendment but would not be allowed under the controls as they currently are proposed.

Senator LUNDY—What I am trying to clarify is whether or not the commercial environment in which you entered into those agreements had changed without any knowledge of the parties or consultation prior to that change being announced.

Mr Drummond—Yes, they did change without consultation, but the commercial reality that we operate under is that there may be a planning change without consultation with us.

Senator LUNDY—I just wanted to clarify it. You have already said that that change has resulted in your proposal effectively not being eligible for consideration under that changed environment.

Mr Drummond—If we exercised the options, and the amendment was posted in its current form, we are best taking those five blocks and putting 10 dual occupancies on them.

Senator LUNDY—I note with interest the economic rationale you have made in your submission. Turning now to precedents, you say:

> The Development Control Plan stipulated that yield or Gross Floor Area was to be controlled by the use of setbacks and restrictions to the numbers of storeys rather than building height.
>
> As a result, the combination of setbacks and a minimum three-storey height limit served to provide a Plot Ratio well in excess of 100 per cent.

Or, one, for the purposes of comparisons, in so much as we are dealing with 0.4 and 0.6.

Mr Drummond—Correct.

Senator LUNDY—Can you tell me why, in your view, that is a precedent for the considerations relating to the frontage of State Circle?

Mr Drummond—It reinforces what was said by RAPI. The National Capital Authority, on major avenues, establishes development control plans for development sites in those areas. State Circle is a major avenue and is eligible to have a set of development control plans established for, for instance, our block of five houses. In the case of the site in Forrest, which is on Canberra Avenue, the NCA have used, I would say, more performance based controls rather than prescriptive controls. We are saying that, because State Circle is an avenue, it is appropriate that it be subject to similar sorts of controls and similar sorts of guidelines—that is, setbacks, height limits et cetera—but that, in setting them, they should look at the economic consequences of what they will get if they are too prescriptive.

Senator LUNDY—Do you have concept drawings that you are able to share with us?

Mr Drummond—No. This is the beginning of a process which—

Mr NEVILLE—Is that the broad vision there?

Senator LUNDY—That is where I am heading with my question.

Mr Drummond—That is one interpretation. I would suggest that, in consultation with the National Capital Authority, it would be significantly different at the end of the day. The influences we see as important in this area are to pick up on the architecture within old Forrest rather than this area, which is young Forrest. This area was developed in the fifties and has 1950s architecture. Because of shortages after the war, maybe, I do not think we have fabulous design outcomes.

Senator LUNDY—Are you trying to be polite, Mr Drummond?

Mr Drummond—I am trying to be polite. The architecture in the older part of Forrest was developed for a specific purpose and I think is quite beautiful in its form. The influences through Oliphant and through some of the early designers actually go back to Frank Lloyd Wright. What we would be looking at is the genesis of whatever we did here going back to what Frank Lloyd Wright did and then take that through its appropriate iterations and consultations with the National Capital Authority to come up with a modern interpretation of his built form. His form is entirely appropriate—large eaves, lots of articulation in the built form, he disguised his three-storey buildings by having a pedestal at the bottom that gave you a sense of it being only two storeys, and he had significant setbacks of his upper floors from the lower levels. All this we would see as a process of design development that would be done in consultation with the consent authority. I must say that would be better done, because they have the ability to do it, with the National Capital Authority than with the ACT planning authority.

Senator LUNDY—That is actually my final question—the issue of uplift. Notwithstanding the prescriptive nature of either authority for this particular site, can you tell me what your specific view is about whether or not this area should remain within designated land or should indeed be uplifted, albeit with some type of conditions attached? I know there are a lot of scenarios within that, but if you have a view it would be great if you could share it.

Mr Drummond—On balance, we would concur with the position of the National Capital Authority that this is an important area, and that, while there is significant change going on within the Territory Plan, it is appropriate that it remains with this authority. I would also make the point that, even if it were with the Territory, the development control guidelines would have to be set by the National Capital Authority, anyway, and to my way of thinking all that does is add another layer of consent authority. Whilst we may disagree in terms of the ultimate design outcome, it is simpler for us to negotiate with the National Capital Authority under a performance based set of controls rather than having to run through two authorities.

Ms ELLIS—I want to thank Mr Drummond and make a suggestion for the sake of the committee members not from Canberra. If the secretariat can find any publications that illustrate Frank Lloyd Wright or Oliphant, it would be a very good idea for them to come to a subsequent meeting with some copies of those books from the library. I

am familiar with Oliphant houses, and I am sure Kate is and other people may be, but some may not be. Taking Mr Drummond's emphasis on that, it would useful.

Mr Drummond—I have a number of books on Frank Lloyd Wright which I am happy to share or lend to the committee. The National Capital Authority has a wonderful library.

Ms ELLIS—I am sure they do. I am sure we can get what we need.

Senator LUNDY—I just want to draw the committee's attention to the fact that there is a substantial number of answers to questions on notice that were provided by the NCA to the additional supplementary estimates in February that may be helpful for the committee's deliberations in this regard. I would also like to draw to the committee's attention the *Hansard* from the recent round of budget estimates because some of the questions and answers which were very helpful in clarifying a number of issues for me would be useful for the committee's deliberations on this matter.

CHAIRMAN—Excellent. Thank you very much, Senator Lundy. Thank you, Mr Drummond. If there are any matters on which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence, to which you can make some editorial corrections if you wish. I would like to thank everyone that attended here today, both witnesses and those people who came along because of their interest in the national capital.

Resolved (on motion by **Senator Lightfoot**):

That the committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 1.42 p.m.