



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL  
AND EXTERNAL TERRITORIES

**Reference: Role of the National Capital Authority**

FRIDAY, 20 JUNE 2003

CANBERRA

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## JOINT COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

Friday, 20 June 2003

**Members:** Senator Lightfoot (*Chair*), Senator Crossin (*Deputy Chair*), Senators Hogg, Lundy, Scullion and Stott Despoja and Mr Causley, Ms Ellis, Mr Johnson, Mr Neville, Mr Snowdon and Mr Cameron Thompson

**Senators and members in attendance:** Senators Lightfoot and Lundy, Mr Causley, Ms Ellis and Mr Neville

### **Terms of reference for the inquiry:**

To inquire into and report on:

The role of the National Capital Authority. In particular the Committee will consider:

- the role of the National Capital Authority as outlined in the Australian Capital Territory (Planning and Land Management) Act 1988;
- the Authority's overall management of the National Capital Plan;
- management issues relating to designated land under the National Capital Plan; and
- the relationship between the Authority and Territory planning authorities.

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**Committee met at 9.02 a.m.**

**CHAIRMAN**—I declare open this public hearing of the Joint Standing Committee on the National Capital and External Territories inquiry into the role of the National Capital Authority. The annual report of the National Capital Authority for the years 2001-02 was tabled in the House of Representatives on 12 November 2002 and stands referred to the committee for inquiry if the committee so wishes. Accordingly, on 26 March 2003 the committee resolved to conduct an inquiry and produce a report on the role of the National Capital Authority. On a number of occasions the role of the authority in protecting Canberra's interests as the nation's capital has impacted on the territory's attempt to maintain Canberra's local interests, particularly in the recent case of the Gungahlin Drive extension. Under the Australian Capital Territory (Planning and Land Management) Act 1988, the authority has overriding powers on planning issues which impact on areas deemed to have national significance, as outlined in the National Capital Plan.

Since self-government was introduced in the ACT in 1989, the authority's involvement in some ACT planning issues has been the source of tensions between the ACT and Commonwealth governments and has led to calls for a review of the authority's responsibilities concerning planning in the ACT. Views reported in the media have questioned the need for a dual planning regime and call for a single planning body with representatives from both the territory and the Commonwealth. However, the majority view among the submissions received by this inquiry is that the two-tiered system which operates successfully at the state and local government level is the most appropriate. Many submissions have also identified the need for a more collaborative relationship between the territory and the authority.

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 at the committee today from the secretariat staff. To date, the committee has received 34 submissions from interested parties. If you would like further details about the inquiry, please ask any of the secretariat staff at the hearing for assistance. I now turn to the proceedings at hand and call Mr Paul Cohen from the Planning Institute of Australia, ACT Division, to give evidence.

[9.05 a.m.]

**COHEN, Mr Paul Dion, Policy Coordinator, ACT Division, Planning Institute of Australia**

**CHAIRMAN**—Welcome. 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. The committee has received submission No. 15 from the Planning Institute of Australia, ACT Division. Are there any corrections or amendments you would like to make to your submission?

**Mr Cohen**—There are two points that I am aware of. One is in paragraph 38, where the submission refers to section 11 of the planning and land management act. It should refer to section 12. The other is in paragraph 31. The last sentence says that the planning institute ‘recommends that the Plan be comprehensively reviewed to remove all commentary and all material specifically related to the National Capital function’. The word ‘not’ is missing. It should read: ‘not specifically related to the National Capital function’.

**CHAIRMAN**—The committee needs to accept these corrections by Mr Cohen. 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.

**Mr Cohen**—There is no requirement for anything in my statement to be made in camera.

**CHAIRMAN**—Do you want to proceed straight to questions, Mr Cohen, or do you wish to say something in addition to what you have written?

**Mr Cohen**—We can proceed straight to questions.

**Senator LUNDY**—I am interested in your general observations. In the operation of the NCA to date since self-government in the ACT, do you think it has fostered good relations between the planning community, the development community and the planning authority of the NCA, previously the NCPA?

**Mr Cohen**—I am not quite sure if I understand the question in terms of good relationships. Are you asking whether the NCA has a good relationship with the planning community generally?

**Senator LUNDY**—That is certainly what I am asking, but I am also looking for observations about how you think that may be improved.

**Mr Cohen**—I think it is very difficult to talk on behalf of a disparate planning community, but the relationship between those people in the planning profession who have a relationship from time to time with the NCA is generally satisfactory.



**Senator LUNDY**—In your dealings with the NCA, what are the issues that crop up from time to time that stand out as being either problems or issues that have to consistently be resolved?

**Mr Cohen**—From my observations, there is a difference between the way in which the territory planning authority works in terms of certainty in development control and the way in which the NCA works in relation to development control. There is a capacity in the territory to have administrative review of decisions of the planning authority while in relation to the NCA there is no provision for administrative review.

**Senator LUNDY**—In your view, if there had been provisions for administrative review, would that have been used, and to what extent?

**Mr Cohen**—It would possibly have changed the climate of development control in the ACT, because it would have meant that the wishes of various persons who are promoting development would have had the opportunity to be heard by an independent review authority when there was a difference of opinion about what should occur.

**Senator LUNDY**—Do you think not having that opportunity represents, at least from those people's perspectives, a denial of natural justice?

**Mr Cohen**—What I would like to do is come at it from a different point of view. In development control in Australia it is a general practice to provide for administrative review. It seems to me to institute that having a system that does not have that process of administrative review is inconsistent with the general practice. Although there are no outstanding instances of lack of justice that have occurred to date, we would expect that the system of a National Capital Authority and a territory authority will prevail for some considerable time, meaning that there is the potential for something to occur. It is not simply a matter of saying that in the past things have gone wrong. Our professional position is to look forward and to try and set a climate for things to act properly in the future.

**Senator LUNDY**—Are you aware of any other planning authorities within any tier of government in Australia that can make planning decisions that are not subject to administrative review?

**Mr Cohen**—We are talking about decisions that are made as a result of applications by landowners and others. I am not aware of any other jurisdictions where that happens.

**Senator LUNDY**—So it is fair to say that lack of administrative review processes relating to the NCA's planning decisions is an anomaly in the Australian Capital Territory?

**Mr Cohen**—It is not an anomaly; it is unusual.

**Senator LUNDY**—Okay. You conclude your submission by saying:

Present Commonwealth and Territory legislation create artificial and unnecessary constraints on the orderly and proper planning of Canberra as both the National Capital and as a large regional centre in its own right.

Can you extrapolate on that statement, please?

**Mr Cohen**—The territory is concentrating on a concept of a city which is a collection of garden suburbs. It is developing the way in which the city develops on that concept of a series of garden suburbs. It calls it a garden city, but I do not think that is a good way to describe what we are doing—garden city is a technical term that has a specific meaning and it tends to confuse people. What the territory really means is a collection of garden suburbs.

The NCA is particularly concerned about the national capital image. We can see that, in the processes that are developing, the territory is less concerned about the national capital image. It is starting to move away from considerations about the national capital image to considerations about the way in which Canberra develops as an independent city in its own right, with its own dynamic and its own reason for being. We believe that the concept under which the National Capital Authority was originally set up was a proper one and therefore there needs to be a National Capital Authority to bring us back into focus from time to time and to continue to put forward the need for thought about Canberra as a national capital.

Occasionally what is required by the National Capital Authority causes some concern for the territory, which feels that what it wants to do in terms of the city is being unnecessarily constrained. We need to have mechanisms that will overcome this. We have suggested that there ought to be formal representation on each authority of a person from the other authority. We have suggested that the chief planner in the new planning authority ought to be, by statute, a member of the National Capital Authority and, similarly, that a member of the National Capital Authority ought to be a member of the new planning advisory council to be set up under the territory legislation which comes into effect on 1 July this year.

There is an anomalous situation there because, if a territory person was to become a member of the NCA as a full member, they might have voting rights on the authority, whereas the territory planning advisory council can only give advice at the request of the minister or of the planning authority itself. I am sure that body will become too robust to be constrained by waiting to be asked for its advice, and I expect that over time it will offer its advice on its own motion. The situation is that in order to be just between the two there would need to be an arrangement that ensured that both representatives had the same power and authority.

**Senator LUNDY**—In terms of removing artificial and unnecessary constraints, part of the influence or power of the NCA is over designated areas where they do not have full planning and development authority but they have some. Do you think there is any merit in removing some of that overlap as a way of managing that relationship more effectively but still retaining both interests: the national capital interest and influence in some aspects—

**Mr Cohen**—Yes. We have suggested that an appropriate way is to have a single plan but with the Commonwealth having the capacity to require certain things to be done in that plan in relation to areas in which it has a primary interest. At the moment there are designated areas which are territory land and which require places within those areas to be subject to both territory legislation and Commonwealth legislation. This causes some difficulty from time to time.

For example, in places which are in designated areas that are subject to the Australian Heritage Commission Act there is a requirement that any development on that sort of land has to go to the Australian Heritage Commission under section 30 of that act for the Heritage Commission to

give a view on whether the development or the proposals should proceed. Under that act, the National Capital Authority is required to not act inconsistently with the comments of the Australian Heritage Commission in relation to development. This can cause a degree of uncertainty and an attenuation of the development control period while matters are resolved between the National Capital Authority, the Heritage Commission and the developer as to what level of development should occur.

**Senator LUNDY**—That is another layer of overlap.

**Mr Cohen**—Yes. Those sorts of things need to be resolved and could be resolved through an integrated planning system which ensured that the Commonwealth had primacy over its areas of concern but did so in a way that was not at a complete remove from what goes on in the territory and understood what the territory was doing.

**Mr CAUSLEY**—Mr Cohen, paragraph 27 of the submission says that the National Capital Plan is redundant. I presume that is the plan that you are working from at the present time. Then in paragraph 32 you go on to say:

Currently the Territory is developing a suite of plans under the general title “The Canberra Plan”.

How is that plan being developed? Is it being developed in cooperation with the territory government and the National Capital Authority?

**Mr Cohen**—The Canberra plan is being developed through a process of consultation with a number of parties. It is being developed through a process of wide-ranging consultation with members of the Canberra community and in conjunction with the National Capital Authority and other authorities who are stakeholders in the development of the ACT. Within the Canberra plan there are a number of components. There is a spatial plan, there is an economic white paper and there is a transport plan, which together form the Canberra plan. There is a whole range of consultations with various parties. But at the end of the day the plan will be the plan of the ACT government.

**Mr CAUSLEY**—As far as the community itself is concerned, and I accept that Canberra is a scattered community—as you have said, a lot of the suburbs are quite distant—how does the community have input into this plan?

**Mr Cohen**—The community can have input into the Canberra plan in a number of ways. The territory runs a series of workshops and consultation exercises. The community is invited to go to those workshops, seminars and so on and work through issues or make comments. There are documents at stages of developing the plan which are made available to the public to give them the opportunity to make submissions on those as individuals or as groups. There is that mechanism. There are also the normal internal planning mechanisms which do the professional work needed to put the whole thing together.

**Mr CAUSLEY**—If at the end of the day someone feels they have been severely disadvantaged, what rights do they have? I heard Senator Lundy say earlier what I took to mean that in Canberra people do not have the right of appeal against a plan.

**Mr Cohen**—That is correct. The territory plan, for instance, is made under the provisions of the territory's land act. Although there are provisions for parties who have a concern about a development to take their concerns to the Administrative Appeals Tribunal under part VI of the act, under part II of the act, under which the territory plan is made and varied, there is no right of appeal against a variation. A variation is formulated by the planning authority, it is put to the executive, the executive is required by law to refer a variation to the territory plan to a committee of the assembly, who may have public hearings and make recommendations in relation to the variation to the territory plan. But the executive is not bound by the recommendations of that committee to accept the amendments proposed. A prime example is the garden city amendment, which was rejected by the planning committee of the assembly but which the government has gone ahead with in the last few days and put into law. So there is no statutory right of appeal—

**Mr CAUSLEY**—With 'government' you are talking about the ACT government?

**Mr Cohen**—Yes. So citizens in the ACT have no right of appeal to an administrative tribunal or a judicial tribunal against a making of a plan in the ACT. The spatial plan and the Canberra plan are not statutory documents in the sense that the territory plan is. The territory plan is a statutory document which is required to be made under Commonwealth legislation, but the spatial plan, the transport plan and the economic plan are not statutory documents. They are being made at the direction of the territory. What effect they will have will be effect given to them by direction of the ACT government, but they do not have the same statutory framework or formal framework that the territory plan has because it is a creature of the Commonwealth legislation.

**Mr CAUSLEY**—I think you said earlier as well that, because Canberra is the Australian capital, in fact there are certain issues that are important as the capital?

**Mr Cohen**—Yes.

**Mr CAUSLEY**—How wide would that go? Would it be within the parliamentary precinct or go wider than that? Are you saying that the National Capital Authority should have a veto on some of these things within an area such as the parliamentary precinct?

**Mr Cohen**—The Commonwealth has power over those places which are of national capital significance. Those places are generally designated in the National Capital Plan. Those places are really quite widespread and they extend from a sort of nebulous area which is called the 'seat of government' and was originally covered by the Seat of Government (Administration) Act 1910. That is a much bigger area because, as the national capital, a sort of impression is given by not only the parliament itself but the areas that surround it and the landscape backdrop to the whole place, which extends as far as the skyline and the hills. They really are an important part of it, and I think the mountains behind Canberra have been seen and understood by members of the wider Australian community as the backdrop to the national capital. There is a need to protect those areas. It is the institute's view that that protection really needs a two-level response. There is no doubt that the ACT government have environmental concerns, which they look after very well in terms of looking after the forest areas and the rural areas of the city, but occasionally their views are orientated—

**Mr CAUSLEY**—That is a fairly grand statement after last year, isn't it?

**Mr Cohen**—After earlier this year?

**Mr CAUSLEY**—Yes—with the fires in the forests.

**Mr Cohen**—No, it is not really. That was a set of unique events.

**Mr CAUSLEY**—It is probably best left to another committee that I sit on.

**Mr Cohen**—I am sorry; it is a very personal thing.

**Ms ELLIS**—Exactly.

**Mr Cohen**—I am having a lot of difficulty with that.

**Ms ELLIS**—It is good to have you here this morning, Mr Cohen. I have a question that is maybe a little out of left field, and I do not know how you may care to answer it. If a businessperson were arriving in Canberra tomorrow and was interested in developing a business venture of some kind and needed to find land and construct, given all the different layers of labelling land—designated, non-designated, territory land, Commonwealth land—and there being the NCA, the ACT, the planning authority, the National Capital Plan, heritage, where would you tell them would be the best place to start to make it the quickest, simplest process?

**Mr Cohen**—Probably with me.

**Ms ELLIS**—In a way it is a flippant question, but it is a very serious one.

**Mr Cohen**—It is serious.

**Ms ELLIS**—Because it really cuts through to the concerns that people have about how they begin to deal with all this.

**Mr Cohen**—It is a very difficult question.

**Ms ELLIS**—It is.

**Mr Cohen**—My practical experience is that I have seen a number of developers, who had come here to spend a lot of money, just walk away from Canberra. I have seen something like \$70 million of potential investment walk away with two developers who simply shook their heads at the layers of complicated planning.

**Ms ELLIS**—So the serious part of the question is: what do you think we should be doing, given we have this inquiry, to start to get through it all?

**Mr Cohen**—We should be simplifying the process, and we have suggested ways in which we might simplify the process. But, as has always been the case for as long as I have been around

planning in the ACT, which is since about 1976, at the end of the day you have to say to people who come here to do something, whatever it is, 'This is the national capital. It is quite unique. We started out a long time ago on the basis of trying to have a city which is very striking and we have gone a long way away from what the original designer set out to do, but we have managed to retain the essential essence of the city.' That essential essence is very robust; it really is quite robust. The landscape component of the city, the way in which the landscape interlaces with the city itself and how it works, is quite robust. In response to Mr Causley, we may have to have some thoughts about the way in which we deal with that because the landscape comes from the mountains all the way into the heart of the city, and we have seen two bushfires come very close in. We may have to think about that. But that is a matter of adjustment of the landscape rather than doing away with it.

So people who come here to develop and see the opportunities that we have have to have that in their minds. This is one of the key reasons why the institute is proposing that we need to have an authority whose principal interest is focused on the national capital and the national capital interest, so that we do not get carried away and be persuaded by developers. Every developer comes in and says, 'We are going to spend squillions of bucks; we are going to create so many jobs; we are going to have to increase migration to cope with it,' and that rarely, if ever, produces anything of any quality.

**Ms ELLIS**—Precisely.

**Mr Cohen**—We really need to keep our minds clear and take people back to why the city is here—the fact that we want them here, that it is lovely to have them here, but they have to fit into what we are here for principally as a city. We have said in our submission that, even at this late stage of development, it is still principally a government town and that the major part of the industry that works in the city is government oriented one way or the other, primarily or secondarily. We are really saying there needs to be a simplification of the process for developers who are coming here, but they simply have to have their mind focused on the fact that it is the national capital.

**Ms ELLIS**—I appreciate the suggestions you make in your submission about cross-representation. When we all think about it seriously, we would have to be honest enough to wonder why that had never been proposed by the people setting up the systems in the first place, given the intimacy of the situation in terms of the ACT's planning regime. It seems a bit illogical that it has never actually been done. The other quick question I want to ask you comes back very much to what you were just saying. The NCA has taken quite a prominent role—generally, but particularly in more recent times—as the entrepreneurial promoter of the ACT in a way that a tourism authority would do, but many people see them as having a role quite different to that. Do you have a view on the expenditure or the resources used in that way as against what else could be done?

**Mr Cohen**—No, I do not.

**Senator LUNDY**—I want to follow up on what seems to be at the heart of your submission, and I am very interested in your views. The maintenance and the necessity of a national capital authority to protect the national capital interests implies that the territory government is not concerned with those interests. What is your response to that statement? Do you think it is

conceptually and practically possible for a territory government to be empowered with the responsibility to look after the national capital interests of Canberra?

**Mr Cohen**—To answer the second part of the question, I do not believe that a territory government can properly exercise the responsibility of planning, developing and constructing Canberra as the national capital with the pressures that are placed on it, politically and by the community, unless there is some power above it which acts to keep it confined. Originally, when the territory was set up under self-government, there was a hope that the planning authority would have a level of independence that would allow it to operate somewhat in the way that the old NCDC operated, but without the autocratic powers that the old NCDC exercised—that you would have both vision and a sweep of understanding, and some constraints by statute to make sure that the thing did not gallop away like it did before. And that has not been the case. The legislation in the territory has, over a period of years, eroded the function of chief planner to the point where the chief planner is by definition just an officer of the territory who, for the purposes of the Commonwealth act, is designated as the territory planning authority.

So the territory planning authority has been under political control and that political control has changed from time to time representing various pressures imposed upon it in terms of development sometimes and conservation other times. That will always be the case, and that is the way it ought to be if we are going to have a democracy: we will always have this struggle. While this struggle is going on in the community between the varying demands and requirements of groups within the Australian Capital Territory, there is overall that enduring vision of Canberra as a very special place and as the national capital. If that enduring vision is to survive then it is essential that there be a body that is totally and solely focused on that function. Without that, our view is that the vision of the national capital is in jeopardy.

**CHAIRMAN**—Mr Cohen, on behalf the committee I thank you very much for your attendance here today. If there are any matters on which we need additional information, the secretary will write to you.

**Mr Cohen**—I thank the committee for taking time to listen to me today.

**Mr CAUSLEY**—If my facetious remark caused any pain, I apologise.

**Mr Cohen**—That is okay.

[9.41 a.m.]

**WRIGHT, Mr Bruce David (Private capacity)**

**CHAIRMAN**—Welcome. These hearings are legal proceedings of the 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. The committee has received submission No. 20 from you. Are there any corrections or amendments you would like to make to your submission?

**Mr Wright**—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 hearings be held in camera and the committee will consider your request. Do wish to make an opening statement before we ask you some questions?

**Mr Wright**—When I re-read my submission last night I found a paragraph in the conclusion which I think spells out the core of my submission. That paragraph says:

Give the Commonwealth Government total control over the heart of the capital; in some other areas give it the capacity to constrain some development choices which would impact significantly and adversely on the National Capital character; and let the local government have its way unconstrained elsewhere. That was the apparent intention of the current system: the failings have come from the lack of connection between planning decisions and costs—

and I think that lack of connection is currently leading us down a path of a Washingtonisation of Canberra: that unless there is some change we will see overborder development attracting much of the population of Canberra—

the consequently excessive scope of the National Capital Plan—

I refer there primarily to the heavy-handed use of tools like designation when I think that there are other tools which would protect the national significance—

and the failure of the National Capital Authority to update strategic underpinnings of the Plan.

I do not blame the National Capital Authority primarily for that; I think it has struggled against inadequate resources and a statutory regime which makes it very difficult to make substantial amendment to the plan. I think those three things combined have led us to our current situation.

**Mr CAUSLEY**—Planning is a vexed issue in all jurisdictions.

**Mr Wright**—Certainly.

**Mr CAUSLEY**—I come from New South Wales. We have a planning act and the Land and Environment Court where appeals can go. We also have section 101 through which the



government can call in development, and they have done that on the coastal strip at the present time. Basically, it comes down to a conflict of vested interests within the community. I understand there is a plan being drawn up here at present. I hear what you say—and I believe Mr Cohen said the same thing—that there are special parts of Canberra which should be protected according to the original plan. How do you see that a planning process could be put in place? I have read that, but I do not think it is exactly as I see it in other areas. Do you think there could be a planning process put in place which would please the majority of the people of Canberra and take into account the special nature of Canberra?

**Mr Wright**—I think such a planning process would have the two planning authorities working as partners. They represent quite different constituencies which have different interests—and they will always have different interests. If we look at the current process, the problem is that the territory government is going through a planning process and it lists the National Capital Authority among the stakeholders that it is consulting. The ACT (Planning and Land Management) Act makes it quite clear that the National Capital Plan is the strategic land-use plan for Canberra. So we have an agency that has the money and the interest to go through a planning process on the one side—and is doing so—and an agency which is the master of the statutory plan on the other side, which is being consulted only vaguely as a stakeholder.

I think we get to that situation for a couple of reasons. One is partly because of the lack of connection between planning decisions, and costs and benefits between the two governments. The ACT government has a powerful driving interest to find some more developable land in Canberra. The NCA does not have such a driving interest. The NCA, on the other hand, has a pretty map which has some towns separated by landscape. It rightfully wants to protect that because the landscape character of Canberra is, almost unarguably, the core national significance bit. It is the treasure—it makes the city. I believe the only way one can break that would be for the two to be working in partnership. The only way for them to be really working in partnership is if they have similar sorts of resources. Even if the ACT government were to say, ‘Come on board as a partner and help us with this, NCA,’ the NCA could do not that because it does not have the resources.

At different times, one of the planning agencies might want to change things and might have the resources to do that. And we have had a couple of attempts to do it together. The last attempt was in the Kate Carnell era. After a very difficult process, a report was produced in draft form. The Commonwealth was taking forever to sign off on the report and, in the end, the ACT government got impatient and released the report. The Commonwealth minister said: ‘There is no need for us to think about it anymore.’ So the process stopped there. I do not think the problem is primarily a difficulty between the NCA and the territory planning authority working together; I think the problem relates to funding and to political battles. The arguments which one has seen in the last few weeks have not been between the National Capital Authority and the territory planning authority; they have been between the Chief Minister and the Minister for Territories.

**Mr CAUSLEY**—So there is no democracy—it is just a matter of one using power against the other?

**Senator LUNDY**—And power offsetting lack of resources, perhaps?

**Mr Wright**—Yes. You see a totally different climate when the two governments are of the same colour. Gungahlin Drive, unfortunately for many people, happened to straddle a change of government.

**Senator LUNDY**—On the point of the different politics—or governments of different political persuasions—what is your observation about how that has contributed to the relationship between the two authorities and the tensions between them?

**Mr Wright**—I think it is the driving force. I think that generally the planners in the two agencies understand that they are representing different constituencies and, therefore, they will come up with different answers to the same question.

**Senator LUNDY**—By ‘different constituencies’, don’t you mean different political masters?

**Mr Wright**—At times it is that, but the *raison d’être* is the different constituencies: the ACT planners represent the people of Canberra, and the NCA represents the people of Australia. The people of Australia have certain interests and the term ‘national significance’—not ‘national capital significance’, which often gets used—is in the act. National significance will at times dictate constraints on development that an ACT government might want to pursue. There is little doubt of that. Even if there were no political differences, the planners might come up with different answers, and they accept that as professional people. The fact that we see planners swap between the two agencies suggests that there is no professional antagonism. So, yes, it is sometimes because of different political masters. But it is hard to prove because there is no proof of a political master instructing them that I know of.

**Senator LUNDY**—I wanted to draw you out on that point because I think this issue is—

**CHAIRMAN**—Senator Lundy, let Mr Causley finish.

**Mr CAUSLEY**—I want to draw that out a little further. On the issue of conflict between the NCA and the planning authority, I think you were saying that federal ministers of both persuasions have declined to agree to some of these issues. Do you think it is the ministers or the NCA that is behind that?

**Mr Wright**—It is probably both at different times. I was not in the NCA, so I cannot pretend to know the decision making process, but the public statements from NCA about Gungahlin Drive changed at the time of the change of the ACT government.

**Senator LUNDY**—If your view holds true, it means there is always going to be that tension because of the different constituencies and the different interests that are represented. That means that the public policy challenges for both the ACT and the Commonwealth governments are about managing those tensions in the most effective way possible.

**Mr Wright**—And identifying and minimising them.

**Senator LUNDY**—Right. With respect to the issues that you have identified, what are the key elements in order to minimise that tension and, I guess, the inconsistency that is the cause of the problems?

**Mr Wright**—A good first step would be for the National Capital Authority to demonstrate some widespread support for its definition of ‘national significance’, and I think that is easy to do.

**Senator LUNDY**—Like a codification of powers?

**Mr Wright**—I wrote the statement of national significance that is in the National Capital Plan in July 1990, in my first week in Canberra, after having been in North Queensland for four years. There might have been some words changed since, but it looks awfully familiar to me. I think it is broadly right and I think the National Capital Authority has some research which demonstrates that it is broadly right. I would like to see a process whereby that research was matched to the definition and the definition was put out there for some consultation. It would be useful for the National Capital Authority to say: ‘Look, the Australian people’—and perhaps through this committee, the Australian parliament—‘have agreed that this is what we are trying to do. This is the national significance of it. This is what we are trying to look after.’

I think step 2 would be to look at the mechanisms by which it could protect that national significance with least interference on the ACT government. The opportunity is there to step back from designation in many areas—possibly all territory land designated areas, but possibly not all of them—and in some areas to get rid of the maps. There are many areas where the protection of open space could be done by principles, policies and special requirements, if necessary, rather than drawing a line and saying, ‘That bit is urban, that bit is non-urban and if you want to change that you have got to go through a public and parliamentary process,’ when the change might be quite minor. Although, I think it is unreasonable to tell the National Capital Authority to do that, because we have the critical underlying factor that the plan is old. It is a 1960s plan that has been fiddled with. It is based on American 1965 transport studies, and all that has happened since is that people have looked at it and said, ‘Yeah, we think it is sort of right.’ I do not think a 1965 plan can be right for Canberra now.

**Senator LUNDY**—I am interested to hear more about the magnitude of change that you are advocating for the National Capital Plan. What would be your priority—the three core elements that you are most concerned about?

**Mr Wright**—It would be the structure of the city, and I suspect most of the changes that you would make to the structure of the city would be things that would become ACT concerns because they would be within the towns.

**Senator LUNDY**—And that is your point.

**Mr Wright**—I have little doubt that, if you did the exercises just on national significance, a big part of the answer that you would get would be to protect that landscape character. If you protect the landscape character that means that you have a system of towns—although you might have another town somewhere—separated by landscape. You would keep the hills free of development. Those sorts of core national things, I think, would stay the same. If you were going to be reasonable and rational, you would find a way for the ACT to have some reasonable new development sites, but you would not just say, ‘Look, there is some forest burnt out there so, instead of putting some forest back, we can put some houses there.’ You actually look at the transport structure, the environment structure and the infrastructure from sewerage to jobs—the

whole thing. That is why in order to solve the problem you need the two planning authorities, each with sufficient resources, to sit down together and come up with a spatial plan for Canberra, and not have one of them come up with a spatial plan—as I was interested to hear half an hour ago—that is going to be a non-statutory spatial plan anyway. What is a non-statutory spatial plan when you have two statutory plans?

**Senator LUNDY**—Thank you very much for that. I am very interested in your submission as it raises the spectre of very practical issues like the cost and management of open spaces and land that are designated or, indeed, under the control of the National Capital Authority, and how that cost structure impacts upon the ACT authorities, for example. You have written some very interesting points about that in your submission, but I want to give you an opportunity to sum up the core of it. It obviously adds complexity, but it raises some equity issues.

**Mr Wright**—I am not an expert—and I raise that because, in many years of looking at this question, I have not found anybody who is an expert on it. I do not think anyone actually knows the full rationale for the financial relations between the two governments. There have been a number of decisions over a number of years by a number of different agencies in a number of different political environments, and the net result is that one can identify some payments that are patently not just. I use the open space one as an example. The Grants Commission has granted \$4.50 a head, from memory, for the large amount of open space in Canberra—a figure that is based on a standardised cost of managing open space across Australia. The National Capital Plan sets principles and policies about how that open space shall be managed and why. So you have two things: the \$4.50, or whatever it is, does not represent the actual cost; and the Commonwealth is paying \$4.50 a head, but has no mechanism for measuring whether it is getting what it is paying for.

There is a disjunction between planning decisions and funding. I guess Dunlop is the perfect example in that the NCA agreed to Dunlop but did not agree to some other things. The ACT government has made some money—thank you kindly—out of developing Dunlop because all the infrastructure was there. They would have made a lot more money if it could have developed a lot more. But there is no funding mechanism that recognises that every time you constrain a development in the ACT, you are actually imposing a cost on the ACT government and the people and administration. That, I think, is behind the deterioration we are seeing in the infrastructure of Canberra and the growing attractiveness of the Jerrabomberras of the world.

**Senator LUNDY**—Because of the impact on the ACT's ability to develop, is there no mechanism within the Grants Commission to offset that through Commonwealth funding?

**Mr Wright**—I suspect that the ACT government could go post-hoc to the Grants Commissioner and say, 'Look you should change the figure we are getting for national capital influences,' come the next inquiry whenever it is. What would be the result? I do not know. Again, there would be some standardised figures rather than actual figures, I would imagine. I doubt any ACT government would ever build all over Mt Ainslie if it had the opportunity. Although I suspect that, if you were to remove the controls, one day or one year an ACT government would put three or four rows of houses along behind the War Memorial because there would be this driving financial incentive to do so.

**Senator LUNDY**—That is not a desirable outcome in your view?

**Mr Wright**—No, I do not think so but, if I were an ACT Chief Minister who was short of money, I might have a different view. Then there is the bottom of Black Mountain overlooking the lake. They are wonderful development sites.

**Senator LUNDY**—That is why in your argument you do preserve a role for a national capital authority?

**Mr Wright**—Very strongly. I think a national capital authority needs to have some planning powers over the whole of the ACT. I think it would be quite wrong to confine it to a little hole. What about the mountains out to the west that are the backdrop? If you say that the National Capital Authority only has the little national bit, what is to stop anything happening out there? The land axis actually ends out in the mountains.

**CHAIRMAN**—Mr Wright, I thank you on behalf of the committee for your attendance here this morning. 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 may make editorial corrections. On behalf of the committee again, thank you very much for your attendance.

[10.03 a.m.]

**BAGNALL, Dr David James (Private capacity)**

**CHAIRMAN**—Welcome. These hearings are legal proceedings of the 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 has received submission No. 10 from you. Are there any corrections or amendments you would like to make to your submission?

**Dr Bagnall**—Yes, at the end of the submission I mentioned that the actions of the NCA imposed significant costs not only on my club but also on ACT taxpayers. It is unclear to me that these increased costs are related to the National Capital Plan. So what were these increased costs that were imposed by the NCA? Despite the NCDC setting aside flat serviced blocks of land—

**CHAIRMAN**—Sorry, which paragraph do you wish to correct?

**Dr Bagnall**—The concluding sentences which say:

I believe that they are expensive both for our club and ACT tax payers and arbitrary in their imposition ...

I am keen to appear before your committee to expand on these issues.

**CHAIRMAN**—If you have the corrections written, you could table them or you could read them out if you wish.

**Dr Bagnall**—I have not typed them, so I would be more comfortable reading them. The NCDC allocated a series of blocks which they put aside for rowing boathouses on Black Mountain Peninsula in 1969. We applied for one of those blocks. Instead, the NCA allocated us an unserviced block on sloping land that required both excavation and the provision of water, sewerage and electricity. The excavations cost our club several thousand dollars, providing sewerage to the site cost the ACT government \$35,000 and connecting the electricity cost \$18,000. We know these costs because initially the ACT government approached our club to pay for them. So all of these costs could have been avoided if the National Capital Authority had allocated one of the designated boathouse sites that the NCDC had put aside previously in 1969. The arbitrary nature of the NCA's decision to locate us away from these NCDC serviced blocks is evident because subsequently the NCA has offered exactly the same sites to other rowing clubs and schools.

The design specifications that the NCA imposed on our club also were a direct cost borne by the club. The NCA insisted that the boathouse be built of brick, adding significantly to the cost. I argue that that was an arbitrary decision given that the much larger AIS boathouse is metal clad, so there is not consistency across the various boathouses. In my written submission, I suggested that the NCA adopted several strategies to obstruct us getting a lease. When reviewing the correspondence, I have rediscovered other methods that they employed to prevent us getting a lease. Thus, in a letter to Senator Reid, the NCA's acting chief planner said:

It is understood from discussions with the club that the development will rely heavily on funds they have sought from the ACT Community Development Fund ... Access to funds for capital works projects from the CDF is also dependent on the applicant having a lease. In these circumstances the authority is not prepared to approve the release of a site.

In essence, they were saying, 'We are not giving you a lease unless you have got the money.' But the ACT government, from whom we were told we would get a grant, were not willing to give us a grant unless we had a lease.

**CHAIRMAN**—It is a classic catch-22 situation.

**Dr Bagnall**—Yes, it was a beautiful bit of bureaucratic obstruction. Later on, the National Capital Authority adopted other strategies which I described in a letter to Senator Reid.

**CHAIRMAN**—Do you mean former Senator Reid?

**Dr Bagnall**—Yes, but I do not need to quote from that. Basically the National Capital Authority said that they were unable to develop criteria for the building. The delays in defining the building criteria for the sites were, according to the National Capital Authority, because of staff cuts following budget cuts. The ACT leasing branch also suggested that the \$92,000 building suggested by the territory planning authority might not have received the approval of the National Capital Authority for some of the suggested sites. Margaret Reid replied to us, that:

Your letter of 17 September 1990 has to be read twice to be believed. It seems more like fiction than fact. I am doing what I can to sort out the problem.

The pressure that former Senator Reid and Mr McMullan applied to the National Capital Authority led to us subsequently being granted a lease. Without their intervention, our boathouse would not have been built. That was made very clear to us several times, when they basically rejected our lease application.

**CHAIRMAN**—That was the NCA.

**Dr Bagnall**—Yes, that was the NCA. All of this was said in phone calls; there was never any correspondence with us directly. Clearly the NCA are answerable to only this parliament, because of the act. Their day-to-day dealings with the various lake user groups are appalling, as was evident in the lake closure episode that I referred to. I would argue that the NCA are ill-suited for the day-to-day administration of Lake Burley Griffin. When the water police closed Lake Burley Griffin, they informed us that the bacterial count was thousands of times over the safe limit. As a biologist, I found this claim unbelievable. If the bacterial count was due to a sewage spill, the whole of Canberra would have smelt it. Given that the lake smelt clean and there was no report that all of Canberra's sewers were dumping into Lake Burley Griffin, I feel that the NCA overreacted. It is unclear to me whether the NCA were unaware of the disruption they caused with the lake closure or indifferent to the consequences at the time they made their decision. Either way, their actions indicate they are not the appropriate authority for day-to-day lake management.

From the point of view of community organisations that are constrained in building on national capital land, it is important that the NCA have statutory obligations: firstly, to

acknowledge receiving correspondence, which they did not do right through our process; secondly, to impose a statutory limit of three months to select sites and approve works applications; and, thirdly, to set up an appeals procedure for applicants. I also feel that there are major problems with a lack of transparency and really poor communication. I would have thought that these problems needed to be addressed. The lack of consistency in design criteria and poor current preferred orientation of boathouses needs to be addressed cooperatively with rowers and other lake users. In cities like Melbourne and Philadelphia, boathouses are a tourist attraction. Clearly the planners in the ACT have got it wrong.

**CHAIRMAN**—Thank you, Dr Bagnall.

**Senator LUNDY**—I move that the amendments be incorporated into *Hansard*.

**CHAIRMAN**—There being no objection, it is so ordered.

**Mr NEVILLE**—Quite apart from the bureaucratic gobbledegook that you went through and the catch-22 situation, what was their fundamental objection? Firstly, why did they say you could not have one of the designated sites? Secondly, did you choose the alternative site or did they choose it? What was their fundamental objection to your particular club going there?

**Dr Bagnall**—Firstly, dealing with the NCDC serviced sites, it was put to us, again, in conversation—

**Mr NEVILLE**—So there was nothing in writing?

**Dr Bagnall**—No, nothing was in writing. It was put to us that if you have a salami, you do not chop it in the middle, you chop it from the end. We were located at one end of Black Mountain Peninsula rather than at what they perceived as the middle of Black Mountain Peninsula.

**Mr NEVILLE**—I do not follow that.

**Ms ELLIS**—Neither did they.

**CHAIRMAN**—Was that another analogy, Dr Bagnall?

**Dr Bagnall**—No, that was the analogy given to me, Mr Chairman. I did not necessarily agree with it at the time.

**Mr NEVILLE**—Did they think at any time that your committee was not up to the mark at doing the job?

**Dr Bagnall**—No. I am not sure that I want to be in the position of justifying the way they behaved. We were given a lot of misinformation on the way through. All of it could be denied now, because all of it was hearsay, effectively, over the telephone.

**Mr NEVILLE**—So your basic premise is that they just run their own agenda.

**Dr Bagnall**—I think the evidence suggests that. Yes, I agree.



**Mr NEVILLE**—If you had applied for one of the NCDC sites—

**Dr Bagnall**—Which we did.

**Mr NEVILLE**—How could you be denied that if you were a competent club and you were applying for the purpose for which the land was allocated? What was their excuse?

**Dr Bagnall**—That was Mr McMullan's point.

**Mr NEVILLE**—So they went and found a new site and subjected the ACT government and you to a gross amount of additional cost without explanation?

**Dr Bagnall**—Yes.

**Mr NEVILLE**—That is almost unbelievable.

**Mr CAUSLEY**—There was no complaint on aesthetic grounds?

**Dr Bagnall**—They had a worry because we were a community club. It partly comes back to the current boathouses in Yarralumla Bay that were designed and built by the NCDC of besser bricks at a time when besser bricks were a functional way of doing it and the NCDC was keen to get activities on the lake. The nature of that suburb has changed—this is my interpretation of what has gone on—and certainly one of the planners said to me that within the NCDC the Yarralumla Bay boathouse area is regarded as a planning disaster because basically the suburb has changed from being a series of monocrete houses to having very expensive real estate surrounding the lake. I think that is where it was coming from—

**Mr NEVILLE**—But you can do very attractive designs without brick.

**Dr Bagnall**—Sure.

**Mr NEVILLE**—Very attractive designs.

**Dr Bagnall**—Sure. But it was to do with aesthetics and perception—

**Mr NEVILLE**—Go along Coronation Drive in Brisbane: there are some magnificent things right on the water. They are not brick, besser brick or anything like that. They are glass and steel, and are very attractive.

**Dr Bagnall**—I do not disagree with you.

**Mr NEVILLE**—I do not know the timeframe here, but did you ever challenge the design of the Institute of Sport boathouse?

**Dr Bagnall**—We are supportive of the—

**Mr NEVILLE**—I know you supported it—I do not doubt that for a minute—but did you ever challenge the fairness of approach?

**Dr Bagnall**—We were desperate to build this boathouse—

**Mr NEVILLE**—The Institute of Sport is the big end of town so far as sport is concerned.

**Dr Bagnall**—Sure.

**Mr NEVILLE**—You were probably at the lower end of town, but that does not mean you should not be treated with equity and with respect.

**Dr Bagnall**—Sure. The NCDC built that boathouse a year or so before we built ours, so there was a transition in power from the NCDC—

**Mr NEVILLE**—Theirs actually went up before yours?

**Dr Bagnall**—Yes.

**Mr NEVILLE**—In metal?

**Dr Bagnall**—Yes.

**Mr NEVILLE**—While they insisted you build in brick?

**Dr Bagnall**—Yes.

**Ms ELLIS**—Can I just make a quick observation. As a local member I am aware of some of the history that you are giving us this morning, David, and I have to say that my colleagues are rightfully incredulous because it just sounds so, to put it bluntly, ridiculous, doesn't it? You have given the illustration that Yarralumla Bay might have been acceptable at the time but it now is not because the suburb around it has improved; and I agree with you. I would hate to think that an analogy could be that if you build a scout hall in a salubrious suburb it will cost you a hell of a lot more than if you build it in an outer suburb. The point is: community facility is community facility, and there needs to be some sensibility, surely, about what we are building and what we are considering. I just make that as an observation. Can I again say as a comment to my committee colleagues from places other than the ACT that, as incredulous has it sounds, from my recollection this history is actually very accurate and a little bit stunning in its recitation. It is just unbelievable.

**Dr Bagnall**—Yes, I think some transparency in the process would be very useful, because I think there were arguments within the NCA as to how they should deal with us and we were getting conflicting reports. There are not transparent rules, and transparency would be very useful I think from a local perspective. Given that the act largely assumes that there is not a local component in the NCA's responsibilities, we get ignored, basically, and it is possible that the big end of town gets a better deal just because it will clearly have consequences for them.

**Mr CAUSLEY**—It would seem to me that the core of your frustration over this whole issue was the fact that you had nowhere to appeal except through your local, elected political representatives.

**Dr Bagnall**—Yes, in this parliament. It was quite clear that the ACT government had no influence.

**CHAIRMAN**—You speak of the Narrabundah Rowing Club.

**Dr Bagnall**—The club has formally changed its name now to the Black Mountain Rowing Club because we have relocated.

**CHAIRMAN**—How many members do you have?

**Dr Bagnall**—About 130 active members at the moment. For the first time since 1969 I am no longer a committee member. I finally decided to get a life.

**CHAIRMAN**—Or another one. You have had a very interesting life to date.

**Dr Bagnall**—Yes, battling the NCA. I am definitely not speaking on behalf of the committee, because I am not on that committee.

**CHAIRMAN**—I understand.

**Dr Bagnall**—I have a suspicion that other groups might well have been more willing to come forward, apart from the inconvenience, if they did not feel that the NCA is still a very powerful organisation among lake users and locally. I do not think there are many local people who encounter the NCA who would say that it is an easy organisation to deal with.

**Mr CAUSLEY**—You mentioned the fact that the NCA arbitrarily closed the lake and you questioned the reason for that. Isn't the core of this issue again our legal system, where authorities tend to overreact because they think they are going to be sued by someone who might fall out of a boat or swim in the water or whatever?

**Dr Bagnall**—Yes, I would concede that that is the case. However, I do not believe the NCA have the resources to even be aware that these readings were unbelievable. That is the word I just used. They were unbelievable.

**Mr CAUSLEY**—Was there a laboratory that publicly assessed the readings?

**Dr Bagnall**—Yes, I think it is on their web site. They have outsourced that particular activity. I do not think they have biologists on their staff anymore. There was a particular laboratory and it is on their web site now. They have basically said that the science was wrong and they got it wrong.

**Mr NEVILLE**—How could a biologist get something as fundamental as that wrong?

**Dr Bagnall**—I think you would have to ask that of that particular lab.

**Mr NEVILLE**—Was it the lab or did the NCA—

**Dr Bagnall**—They argued that the standard test for measuring E. coli picks up rotting plant material and that there was some rotting plant material in the sample.

**Mr NEVILLE**—I see.

**Mr CAUSLEY**—It has been brought to my attention by Senator Lundy that the lake was closed because there was a rowing championship on.

**Dr Bagnall**—No, it was closed because of allegedly high bacterial levels. There was a sewage spill.

**Mr CAUSLEY**—But was this payback in some way?

**Dr Bagnall**—No.

**Mr CAUSLEY**—You do not think so?

**Dr Bagnall**—No. They are an organisation that are indifferent to lake users. They are oblivious to us as a sporting community. I think only after they had done it and people like the triathletes had to change their events and the Institute of Sport had to move their training down to Lake Tuggeranong did they realise the inconvenience that their actions caused, because they did cause inconvenience. There were quite a few major sporting events, camps et cetera that were affected by that decision. I suspect they suddenly discovered there were a whole lot more people who used the lake than they were aware of and that they were inconveniencing them.

**Senator LUNDY**—I should say that, having been a member of the Canberra Rowing Club committee at various times and retained my interest not just by rowing but also as patron of the Canberra Rowing Club, I am also familiar with some of these issues that have been raised. I do recall the odd race on the lake with Mr Causley back in 1997 in the masters.

**Mr CAUSLEY**—Yes, I come from a long history of rowers, back to Henry Searle.

**Dr Bagnall**—I see.

**Senator LUNDY**—So you have got at least two people on this side of the table who have been in a rowing boat on Lake Burley Griffin. I guess my question goes to other circumstances relating to other clubs that you are at least aware of anecdotally and that you are able to share with the committee—about difficulties with the NCA in subsequent applications for boathouse development and, indeed, upgrading of existing facilities?

**Dr Bagnall**—Yes, I am aware that they have had difficulties. I did not want to particularly get into details.

**Senator LUNDY**—That is fine.

**Dr Bagnall**—Even such trivial things as whether the boathouses have gutters or do not have gutters—trivial issues that become quite major.

**Senator LUNDY**—Since your issue with the NCA and the construction of the Narrabundah Rowing Club, can you give the committee a brief description of what development has taken place with rowing clubs around the lake foreshores?

**Dr Bagnall**—Opposite us on Black Mountain, the Daramalan College built a boathouse, and I understand that Radford College have applied for one of the other Black Mountain NCDC approved leases. I understand that they are in that process; certainly they are raising funds for that. Capital Lakes Rowing Club, which split from Senator Lundy's club, have subleased our old boathouse, and they are currently in Kingston after having many arguments with the National Capital Authority.

So it is a growing sport, but I worry about other sports that do not have the same organisational clout. Sports like dragon boating, surf lifesaving, kayaking and even triathlon at various times have all rented space. Institute kayakers kayak from our club, and I know the kayakers at one stage attempted to get a boathouse and decided it was all too hard. The process was too expensive and too complex, because community facilities are just not going to be built and have not really been built. I do not think you can count the schools as being community style clubs.

**Senator LUNDY**—Just on that point, Girls Grammar also built a rowing shed on Yarralumla Bay. I do not know what their experiences were as schools in gaining approval, but there certainly have been two, Daramalan and Girls Grammar, that have been constructed in the intervening period, with a potential third on the way.

**Dr Bagnall**—Yes.

**Senator LUNDY**—I am sorry, keep going about community groups.

**Dr Bagnall**—I would be worried that community groups are just saying, 'This is much too hard.' It is not possible to get the continuity of committee members who are willing to put in the hard years to actually beat this particular system.

**Senator LUNDY**—So what do you think should happen? Do you have any ideas about a potential solution to improve equity and access to the lake and also to resolve these administrative difficulties that you have experienced first-hand?

**Dr Bagnall**—Certainly, there are those things that I mentioned in my earlier presentation. The high design criteria are interesting, and I understand where the NCA is coming from, but the costs do seem to be arbitrarily applied—you know, brick versus metal. I am not even convinced that they are leading to good outcomes. I am not particularly convinced that they are resulting in attractive boathouses.

**Senator LUNDY**—Right.

**Dr Bagnall**—I personally think a two-storey boathouse with a veranda out the front, a traditional—

**Senator LUNDY**—Can you go there, for the committee's benefit? I am certainly familiar with these issues, and I am sure Mr Causley is as well. A traditional boathouse is right on the foreshore. It has a ramp that links the construction—the building—with the water via a ramp structure, or at least a very clear, open access pathway—

**Mr NEVILLE**—Yes.

**Senator LUNDY**—Mr Neville knows what I am talking about as well. The doors open fronting the lake, to allow for safe and easy access to the boats, and there is usually—and I have had a look at quite a few boathouses around the world, for the reasons you describe; they are tourist attractions—a second storey to allow club and community style facilities to be separated, warm, safe, and secure, from the boats and physical equipment downstairs. I have done half the question for you: can you tell me what boatsheds look like in the ACT?

**Dr Bagnall**—The NCA insists that the boatshed doors do not face the water.

**Senator LUNDY**—What?

**Dr Bagnall**—They perceive these as unattractive. They have them set back from the lake edge, so that that does not become effectively private land. In the case of our boathouse, they were very keen for us to put pergolas around it, and we managed to convince them that trees would do, but they are very keen to screen us from the lake. In fact, at various times they have attempted to put trees out the front of the Canberra Rowing Club, and these have usually not survived. They like to screen with trees. These are big 20-metre boats that you are getting in and out, and so it is unlikely they would survive that particular screening.

**Senator LUNDY**—What about the second storey business?

**Dr Bagnall**—Because they are big buildings—20 by 20—the scale looks better with a second storey. You would usually have a gabled roof with things like that.

**Senator LUNDY**—Do any of the sheds in Canberra have that second storey with the social facilities upstairs?

**Dr Bagnall**—Not rowing clubs, but clearly some of the yacht clubs do—and Girls Grammar have that. Girls Grammar is interesting. They had a narrow site and were constrained, having a narrow site, and they face the water. They have got, effectively, a traditional design but a modern building.

**Senator LUNDY**—So they do face the water with the second storey?

**Dr Bagnall**—Yes. And that was built after our shed.

**Ms ELLIS**—With doors opening to the water?

**Dr Bagnall**—Yes.

**Senator LUNDY**—That is obviously different treatment. Have you got any observations to make about that different treatment?

**Dr Bagnall**—It would appear to be arbitrary.

**Mr CAUSLEY**—Again, there is inconsistency.

**Dr Bagnall**—Yes.

**Mr NEVILLE**—Did you gain the impression when you were negotiating with the NCA that they really knew what standard boatshed practice was around Australia?

**Dr Bagnall**—No, they had no idea. When we said we wanted a 20 by 20 metre building, our initial project officer said, ‘Why do you need it so big? That is the size of a small Shop-Rite,’ which was a supermarket chain at the time in Canberra. You are absolutely constrained by the length of the boat.

**Mr NEVILLE**—I have been associated with rowing clubs. We have an international course in my electorate, and I know exactly the sorts of things you are talking about. I am not trying to put words in your mouth, but I would have thought the way to attack this if you did not have the expertise in-house would have been to go around Australia and look at Australia’s best practice in this sort of thing and then set a design standard for Canberra that was simple but effective and reflected that, having regard for the environment in which you were going to place them. The idea of the upper storey—of course, as you know and as my colleagues have said—is for the social and community activities of the club. But quite often, too, if it is close to the course itself, it is for officials; it is for safety; and it is for overlooking the activities, especially when you have got young rowers around. I cannot for the life of me see why you would want to have single storey ones. It is an invitation to ugliness, isn’t it?

**Dr Bagnall**—I think I would agree with you, but we are dealing with aesthetics, and it is all in the eye of the beholder.

**Mr NEVILLE**—Oh, come on.

**Senator LUNDY**—It is tempting to become subjective at all times, but we try not to.

**CHAIRMAN**—Before I close this segment, could I just ask you about the closure in 2001. Did you have any evidence from the NCA or any other authority as to why it was closed? Did you have some verbal evidence or was the first time you knew it to be closed when the police sirens, as you say in your report, came on the scene?

**Dr Bagnall**—Yes, that was it. It was at 5 p.m. on a Friday. Some of my rowers who were with me training at the time were on the lake, and that was the first we heard of it. Some of the kayakers were pulled up by the police and told to walk their kayaks home because the lake was so dangerous.

**CHAIRMAN**—This is the water police?

**Dr Bagnall**—Yes.

**CHAIRMAN**—Who ordered the police to take that action?

**Dr Bagnall**—Presumably the NCA.

**CHAIRMAN**—But you are not sure that it was the NCA?

**Dr Bagnall**—It would have been the NCA.

**CHAIRMAN**—Are you sure of that?

**Dr Bagnall**—Yes.

**CHAIRMAN**—You are sure it was the NCA. What evidence subsequently emerged to justify the NCA closing that? Did you have any readings of the water, or did you have access to readings of the water—

**Dr Bagnall**—No.

**CHAIRMAN**—that e. coli or blue green algae may have been present?

**Dr Bagnall**—I think the NCA's web site has got a report on that particular incident. I looked at it a couple of weeks ago, and it was still there. So I think the history of that particular incident is still there. They went round the following Monday and hammered in signs at all the boating areas saying 'This lake is unsafe.'

**CHAIRMAN**—When it was closed it was tremendously inconvenient, because I understand that you had a championship at your club on that area of water the next day, on the Saturday?

**Dr Bagnall**—Yes.

**CHAIRMAN**—What did you do with the championship? Was that cancelled?

**Dr Bagnall**—That was cancelled.

**CHAIRMAN**—Why wasn't it taken to some other part of the lake that was not closed?

**Dr Bagnall**—The whole lake was closed. The whole of Lake Burley Griffin was closed.

**CHAIRMAN**—Even though readings were taken spasmodically—if I could use that term—across the lake?

**Dr Bagnall**—I cannot comment on how they did their readings.



**CHAIRMAN**—Do you think there were other motivations other than genuine concern for health?

**Dr Bagnall**—No. I think they were totally genuine and were guarding their legal obligations or worries.

**CHAIRMAN**—That was really the answer I was getting at. Thank you very much on behalf of the committee for your attendance here today, Mr Bagnall. If there are any matters on which we need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence. On behalf of the committee, I thank you again for your attendance here today.

[10.42 a.m.]

**DEL RIO, Mr Alfonso, Chairman, Planning and Environment Committee, Housing Industry Association**

**MORSCHER, Mr Alan Gordon, Planning Adviser, Housing Industry Association**

**PYERS, Mr Michael Peter, Executive Director ACT/Southern NSW, Housing Industry Association**

**CHAIRMAN**—Welcome, gentlemen. 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. The committee has received submission No. 21 from the Housing Industry Association. Are there any corrections or amendments you would like to make to your submission, Mr Pyers?

**Mr Pyers**—No, there are no corrections or amendments that we wish to make to our submission. We wish to make a brief opening statement and then leave it open to the committee.

**CHAIRMAN**—The committee prefers that evidence be given 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. You can make your opening statement, and we will then ask you some questions.

**Mr Pyers**—Mr Chairman and members of the committee, we believe the process initiated by the committee's inquiry is an important one, as it will set the scene for the future planning and development of all aspects of the national capital. This, we say, is an important task, not only for those of us who live here and in the surrounding region but for the nation as a whole. The HIA has made a submission to the committee, which I do not intend to go through in detail at this stage. I merely wish to outline what we believe to be the important issues and then answer whatever questions the committee may have of us.

One of the major issues, from the HIA's perspective, is the relationship between the two planning jurisdictions. The HIA recognises the different and important roles played by the National Capital Authority and the territory planning authority. We believe it is important to have two planning authorities. We also believe that the relationship between the two jurisdictions is the biggest issue for the committee in the context of this current inquiry.

The HIA supports consistency and certainty in planning processes. We believe that a better defined relationship between the two jurisdictions is important. We would say that the proposals on page 13 of our submission provide a good way of achieving this objective. We also say that there are a number of benefits that would flow from this greater level of certainty and predictability in planning processes. We believe there would be benefits for economic activity which might, in turn, assist in resolving the ACT's housing affordability issues. Housing affordability is one of the fundamental issues for the ACT and the nation at the moment. I might

digress slightly and indicate that, in measures conducted by the HIA, the ACT ranks third worst in the nation for housing affordability at this point in time—behind only Sydney and Melbourne.

We believe that these processes and a better defined relationship between the respective authorities can only benefit the housing industry, which is at the end of the day one of the major contributors to the economic wellbeing of the ACT. Having said that, we would welcome any questions that members of the committee may have.

**CHAIRMAN**—Thank you, Mr Pyers.

**Senator LUNDY**—In your conclusion in the document, you say that there are two planning authorities, which represent different constituents and have different responsibilities, and that their ability to work closely and cooperatively is important for the continuing success of the city and its region. How would you codify that cooperative working relationship? You have made some pretty strong points, earlier in your submission, about the frustration arising from and cost of different regulations and practices which occur in different jurisdictions and about uncooperative demarcations between the Commonwealth and territory governments.

**Mr Pyers**—The best way to codify it would be in operational agreements or protocols between the respective authorities. I am not sure whether it could be codified in a legislative or regulatory sense. I will welcome any comments Alfonso and Alan may wish to add on that. However, we would say it must be at the operational level. It is important that what we have described—to use the industrial relations analogy—as the demarcation boundaries are better clarified and resolved at the operational level. We believe that, if the committee could steer things in that direction, that would be an important outcome.

**Senator LUNDY**—One of the obvious areas of crossover concerns designated areas under the National Capital Plan. That is territory land and such areas are governed in part by territory rules and in part by national rules. Do you think there is any merit in the concept of designating that land one way or the other, to be fully under the jurisdiction of either the NCA and the Commonwealth or, indeed, the territory, to remove some of that demarcation?

**Mr Del Rio**—As far as the codification view goes, probably the easiest way is to say that, for a particular parcel of land, the relevant planning approval body is either the National Capital Authority or the territory planning authority. I believe that is able to be done. The concept of allocating designated areas for either Territory planning authority control or National Capital Authority control is supported by industry, and industry has been supportive of the concept of one piece of land and one planning authority.

Obviously, there are issues that get complicated and blur the edges. For example, you have a major transport route such as Northbourne Avenue where you could say, ‘Well, the National Capital Authority imposes planning controls and special requirements, as currently exist, where it sets height limits—it is either three storeys or 20 metres, I think at the moment. So there are possibilities of overlap in imposing control, but certainly designated areas are probably the most problematic concept, because you have two jurisdictions and both wish to exert different points of view. As well, as was mentioned, I think, by the previous witness, a lot of it is down to the subjective determination of what is aesthetically nice, and what is not. That is very difficult to determine, and if you have two architects they are likely to come up with two different views.

**Senator LUNDY**—On that point of the degree of subjectivity about those design and siting principles in designated areas, as required by the NCA, how arbitrary is that in your view? How subjective and difficult is it for developers or builders to meet the NCA's requirements?

**Mr Del Rio**—The experience of members has been that the NCA are very good to deal with. The rules are not prescriptive, in that there is not a lot of substance to them, but they talk about theoretical concepts. You can explore those and come to a reasonable outcome within a fairly short period. That does not mean to suggest that developers get their way, so to speak; they do not. The NCA have very strong views about how they wish to see particular parcels developed, and they are usually quite insistent on those views. But that does not mean that, if you come to them with a good design, they will not consider it. There have been many examples of alternative designs being put to the NCA, and the NCA, after due consideration, having reconsidered their position. So I think, generally, they are quite supportive.

**Mr Morschel**—I think the HIA's experience throughout the country is that the NCA is one of the easier planning bodies to deal with. Subjectivity exists in all bodies—local councils, state governments et cetera—that are involved in planning approvals, and the NCA is one of the better ones. The negotiated process that seems to be the basis of it is well supported by our members. I think that at times some of the development controls on the transport routes—Northbourne Avenue et cetera—could have been a little clearer. It could have been done a little earlier to be in advance of where development might be taking place, but in comparison to the rest of the country the NCA's DA process is good.

**Mr NEVILLE**—How do you reconcile that with the arbitrary nature of some of the NCA's decisions? You say it is a consultative process, and if the consultative process works through to its final outcome that is well and good. But do you find in your organisation that at some stage in that continuum you can come to some sort of arbitrary brick wall—and that seems to be the flavour of what we are hearing? If you do, what sorts of measures or protocols would you suggest might be put in place to ameliorate that?

**Mr Del Rio**—I am not sure what you mean by 'arbitrary'. Planning, one could argue, is, in its very essence, arbitrary. It specifies what you can build and the design that that is to have in a particular location.

**Mr NEVILLE**—I will give you an example, as you probably came in at the tail end of the last witness. The NCA had decided on a basic design for a boatshed in Canberra that is totally out of keeping with the rest of the rowing clubs of Australia—and certainly an uglier alternative to normal practice. That decision was arbitrary. It has since been reversed in one instance. Do you find much of that in your area of expertise—and you range fairly widely? Do you come up against those sorts of arbitrary decisions?

**Mr Del Rio**—There are examples where they have said, 'We don't want to see a two-storey development here.' The boatshed may well be another example, because a view has been expressed that a two-storey development is inappropriate in a particular location. If that is the view, that may or may not be arbitrary, depending upon a particular perspective. I am not qualified to comment on boatsheds in particular but, generally, we find that, if we come up with a particular scheme that has good merit, they are prepared to consider it. So it is more a negotiated position. They do not come to you and say, 'This is what we want to see on this

particular site.' They have a preconceived vision of how the site will be developed, because that is how development control plans are developed, and usually they can be put in place with respect to a particular site prior to that development. The experience of our members is that they are not arbitrary in their view. If you can put to them good reasons why they should alter their position, they are prepared to consider that, and they often do—not always, but often.

**Senator LUNDY**—And that has been your experience?

**Mr Del Rio**—That has been the experience of our members.

**Senator LUNDY**—So they have been cooperative and accessible?

**Mr Del Rio**—Yes.

**Senator LUNDY**—Have you ever written to them and not received a reply?

**Mr Pyers**—Not that I can recall, and I have been involved with the HIA in Canberra for the best part of two years now.

**Mr Morschel**—When we said we were doing this, nothing serious came through from our members with respect to serious criticism on communication. The boatshed issue is not an area that our members are generally involved in as developers.

**Mr NEVILLE**—I want to ask a question about that.

**CHAIRMAN**—With your concurrence, Mr Neville, could we let Senator Lundy finish?

**Mr NEVILLE**—I thought we were feeding off each other.

**CHAIRMAN**—I am sure you were, but could we let Senator Lundy finish?

**Senator LUNDY**—I am quite happy for that degree of informality in the asking of questions.

**CHAIRMAN**—I would rather keep it a little more formal.

**Senator LUNDY**—I would like to get a bit more of an insight into the sorts of developments that your members are involved in that bring you into contact with the NCA. I do so with the knowledge that there is only one pocket of residential land in the control of the NCA, and that is the part subject to the provision of DA 39, which was also the subject of an inquiry by this committee. Where are the sorts of developments taking place that your members are involved in? Is it because your housing industry members also do some commercial work or high-density or medium-density residential work along those main avenues?

**Mr Pyers**—Our members are involved in the full range of housing activity, from new housing areas such as Gungahlin through to more medium-density housing. To the extent that they come into contact with the NCA, it is across that spectrum.

**Mr Del Rio**—For example, an HIA member was involved in the dual occupancy on State Circle. Obviously that is what the reference to DA 39 refers to. The NCA also has control over national land. That includes, for example, the Landmark development, which is overlooking the lake. It includes Benjamin and Cameron offices. It includes anything on a major approach road, which includes development along Northbourne Avenue and along Canberra Avenue. The HIA membership covers subcontractors, who physically do the work, all the way through to residential builders, three-storey walk-up developers and builders of high-rise developments. So there has been a fair degree of contact across that.

**Senator LUNDY**—I just wanted to understand the dimensions of your relationship. It would be fair to say that it would cover everything from the development of a single block such as that on State Circle right through to complex high-rise apartment buildings.

**Mr Del Rio**—To the apartment complex on Northbourne Avenue.

**Mr Morschel**—That is the immediate contact. Of course, the other contact will be in the future—land that might be made available for future development. An important thing for our members is just where the development front will take place in the future.

**Senator LUNDY**—What role are you playing there? Is it a role of lobbying the NCA? I do not understand.

**Mr Pyers**—Land and the availability of land is a major issue in the territory and other places around the country at this point in time. Certainly the cost of land and the availability of land is driving the problems with housing affordability, which I alluded to earlier. If you look at a typical house and land package, which might be worth \$280,000 in the ACT, just on half of that cost is taken up with land and associated costs. The actual cost of building the house itself is a reasonably cheap component.

**CHAIRMAN**—How does that compare with New South Wales, to give the committee some idea?

**Senator LUNDY**—I think I know a few people who would challenge you on that at the moment.

**Mr Pyers**—As I understand it, it is a similar spread of costs. Indeed, the costs in New South Wales, particularly if you are talking about the Sydney metropolitan area, might, indeed, be a little bit higher.

**Mr CAUSLEY**—The cost of land would be higher.

**CHAIRMAN**—What about Queanbeyan?

**Mr Pyers**—I am not sure about the cost situation in Queanbeyan. I would have to come back to you.

**CHAIRMAN**—We do not have any idea as to what the \$140,000 of the \$280,000 land/house package is if we cannot compare it with something.

**Mr Pyers**—Suffice to say, it is probably best that I respond immediately in this way: I understand that Queanbeyan has similar problems with the availability of land ready to be used for housing. So there are shortages of land in the ACT. By inference, you may infer that the cost structures and things like that might, indeed, be similar. I will undertake to provide you with that information though.

**CHAIRMAN**—It would be great if you could take that on notice and come back with figures on Albury-Wodonga or somewhere like that.

**Mr Morschel**—In very simple terms, though, the building construction costs are usually in line with the CPI. The costs we have been seeing across the country are driven by land costs.

**Senator LUNDY**—With designated land, and certainly with land under the National Capital Authority's control—national capital land—there exists a different set of rules for consultation with surrounding stakeholders and the different processes through the course of a development, and also significantly no right for administrative review upon rejection of an application. What is the HIA's views about those issues specifically, and any problems you may have with that, but also the disparity between that system and the fact that the rest of the ACT has a single system governing issues like consultation and the right to appeal?

**Mr Pyers**—I will begin by talking about the ACT system and working my way back through to the differences. We have concerns with the system that operates outside the area of the designated land of the NCA from the point of view that there have been delays, and what we would say to be unnecessary delays, in terms of consultative processes. The ACT government has moved to address those issues by restructuring the way that the local area planning committees, or LAPACs, do business into a more strategic level planning forum.

**Senator LUNDY**—So you were concerned that ACT consultation was too onerous in the first instance?

**Mr Pyers**—That is right, and we have welcomed the reforms that the ACT government have put in place in that regard. Whilst the question of people's rights and rights to appeal at the end of the day is an important one, there is no doubt that it needs to be balanced, in our view, against reasonableness in terms of the actual process that is going on in terms of development. If the development meets all objective tests as being a reasonable development and an aesthetically pleasing development and all matters related to that, then we would certainly say there should be no unnecessary delays or vexatious delays as a consequence of consultative processes.

**Senator LUNDY**—I am actually asking about the ability of developers to review a rejection by the NCA. So it is the same sort of issue but the other way around.

**Mr Del Rio**—And I think that is very true. As far as the differences go, a lot has been made of that in the ACT and a lot has been made of the fact that we have got two planning authorities and that this is something new. The reality is that that is the situation that exists around the country: you have got a local council and you have got a state government arm. So the industry does not believe that the fact that there are differences is a big problem. It makes it difficult because you need to understand that the systems are different, but they are there fundamentally to serve slightly different objectives. I do not believe it is appropriate for there to be mirrored review of a

decision by a developer in circumstances where that right may not exist, for example, by a neighbour. I think industry understands and accepts that if there is not going to be a process which gives a neighbour the right to object and challenge a decision, that similarly that right should not be given to a developer.

**Senator LUNDY**—So you think it is okay—for example, in the sections covered by DA 39—that there is no right to make the developer consult; and equally it is okay that neighbours have no right to express a view or to object?

**Mr Del Rio**—I would prefer to leave DA 39 to—

**Senator LUNDY**—That is the most tangible example we have of residential development where the committee has reported on issues and problems about consultation and rights of appeal.

**Mr Del Rio**—It is also a very limited area when you look at the overall role and responsibility of the authority.

**Senator LUNDY**—I appreciate that. My point is that it is the only area in which the NCA specifically have responsibility for residential development. Their power is vested in them by virtue of the fact that it is an approach to the national capital or designated land. We could talk about that separately, if you like, but I wanted to get the HIA's view specifically about the different consultation and appeal requirements which exist in the one pocket where the NCA's power is there only because that is a provision of the plan. It is not there, for the major part of that area at least, because it is a national road.

**Mr Del Rio**—The issue of DA 39 was obviously circulated to our membership. I do not believe we are in a position to comment on behalf of the membership.

**Senator LUNDY**—That is fair enough.

**Mr Del Rio**—DA 39 was a separate issue. DA 39 and the issues it raises are quite complicated. However, as a matter of general principle, if the industry does not have a problem with there being no review rights by a developer by the NCA—

**Senator LUNDY**—Provided there are no review rights by neighbours or anyone else?

**Mr Del Rio**—That is right.

**Senator LUNDY**—You are telling me that you are quite happy—or at least your members are quite happy—to have a direct relationship with the approving authority and, provided no-one has a right of appeal or consultation, that is okay and you are happy with that?

**Mr Del Rio**—Yes.

**Senator LUNDY**—You are entitled to that view.



**Mr Del Rio**—The basis for it is that, ultimately, the NCA is the umpire and you must respect the umpire's decision.

**Senator LUNDY**—When it works for you!

**Mr Del Rio**—No, irrespective of what that decision may be. Please do not take from this that our membership is happy with decisions the NCA has made or always accepts them, because that is not the case. You can sit down and have a robust discussion and agree to differ but, ultimately, the position of the NCA is no different from the position which existed under the original National Capital Development Commission.

**Senator LUNDY**—You spoke before about your good relationship with the NCA. Would it be a fair thing to say that, if it looked like differences were emerging surrounding a given application, you would probably be able to resolve them via negotiation anyway and get to the nub of those differences?

**Mr Del Rio**—The process is such that that would happen at a fairly early stage, because you go to them with a design. The process, in this respect, is no different from that which exists with the territory government. You go to them with a design and there is a discussion with the planning officials about what they think about the design. They may say, 'We do not like this design.' You then argue the merits of the design and, ultimately, they will say, 'Well, it doesn't matter what you do, we do not accept this design.'

**Senator LUNDY**—They are not going to approve it.

**Mr Del Rio**—The identical position exists with the territory, through the HQSD process.

**Senator LUNDY**—Can you point to any examples where applications by HIA members have been rejected specifically, or are they always sort of knocked off in the process of the negotiation phase, so you don't have to waste your time lodging an application only to have it rejected anyway?

**Mr Pyers**—In my time working with the HIA in Canberra, I am certainly not aware of any specific applications having been rejected.

**Mr Morschel**—On transport routes, PALM has been regarded as the rejecter of the schemes. I cannot think of one where the NCA was the sole body.

**Mr Del Rio**—Senator Lundy, your comments are correct. I am aware that there have been a number of schemes which members have taken to the NCA, where the NCA has effectively said, 'Over my dead body.' There has therefore not been much point in progressing to the DA stage.

**Senator LUNDY**—I presume that has been helpful for your members, because they have not wasted any more time or money proceeding with something that is doomed to failure.

**Mr Del Rio**—That is right.

**Mr Pyers**—They know where they stand, early in the process.

**Mr NEVILLE**—The HIA deals specifically with the building industry. Do many of your members operate in the small to medium commercial sectors as well?

**Mr Pyers**—They certainly do. Our members operate across the full spectrum of the industry, because you need to consider that our membership has an equal proportion of builders—

**Mr NEVILLE**—Where I am leading is this. Yours is a pretty structured association in the sense that you focus on one very important aspect: the building of residences, essentially, of various types. No doubt, both with the ACT government and the NCA, you have a long and established set of precedents. What I would be more interested to know is, when we stray from the building of houses and the like and get into something else—dare I say boatsheds—

**Mr Pyers**—Other structures.

**Mr NEVILLE**—Yes. Can you comment—and you may not be able to—on whether the wheels are greased as effectively as they are with housing?

**Mr Pyers**—I can respond to that and defer to my colleagues for any examples they can recall. As I said to Senator Lundy earlier, I am not aware, in my time of working with the HIA in Canberra, of any specific problems that HIA members have had with the NCA regarding structures, be they residential structures or other types of structures. But I will defer to my colleagues to see if they have any examples that come to mind.

**Mr Morschel**—I suppose, from our members' perspective, the frustration would be if the boatshed were rejected. It would then be a job they could not bid for or for which as tradesmen they could not go in and install the lights or whatever else. There would be that final frustration. But I am unaware of any of our members being directly involved in speculating in or developing land for which the NCA is solely responsible.

**Mr NEVILLE**—Let me now cite an extreme case at the other end of the spectrum where there was not perhaps the same possibility for community consultation. Take, for instance, the Kingston Foreshore development, which is right on the lake—and this did come before this committee at a much earlier stage. In terms of the consultative process, did you get involved in that or did your members get involved in that individually?

**Mr Pyers**—I might let Mr Morschel answer that question.

**Mr Morschel**—It is a bit before my time. Is that going back to the decision of the land transfer?

**Mr NEVILLE**—Not just the land transfer but the character of the area: what it was set to achieve, what the design concepts might be. Were you in that consultative loop?

**Mr Del Rio**—I will answer that because it relates to my time. Yes, the industry association was involved, as was basically every major industry association. The process that was gone through was a competition process, so that was quite consultative. It does not mean that you consulted the public to ask them what they wanted to see there; it was more of a competition process that was gone through.

**Mr NEVILLE**—But you see the dichotomy: something as big and as all-encompassing as that, on the one hand, is a very simple, straightforward process without, if I read you right, a great deal of intervention and design concepts; whereas, on the other hand, if someone wants to build a boathouse at the other end of the lake, they go through the tortures of the damned.

**Mr Del Rio**—Sure. I should make it clear, though, that even though I have said that that is the process it does not mean you do not go through many iterations to actually get something through.

**Mr NEVILLE**—Including design concepts?

**Mr Del Rio**—Including design concepts. The developer or the builder is familiar with the process that they need to go through. They understand that they need to come up with a design and a scheme and argue in favour of that design and scheme. The real issue that I think you are referring to is where there are people in the community who are not familiar with those concepts, and they find those processes incredibly frustrating to go through. But I would also suggest to you that, with the ACT planning authority, those same frustrations are expressed with respect to a person who wants to build a pergola in the front of their house in the middle of Isabella Plains.

**CHAIRMAN**—Could I put it to you, Mr Del Rio, that the Kingston Foreshore development took several years from concept to approval—is that correct?

**Mr Del Rio**—That is right, and there are still development applications that need to be lodged with respect to each of the individual components.

**Mr NEVILLE**—Let me just move on. This is a little bit to the side of what we are talking about but I think it is important because it probably impacts as much in the ACT as anywhere else. Are we reaching a stage with planning generally where organisations like the NCA and planning authorities, especially in terms of the designation of land and what type of building should go on that land, have become onerous to the point where that is becoming a rather serious component of the cost of a dwelling? I understand you to have said that the physical building costs themselves have been following a national CPI pattern. To what extent are the planning processes around the land itself and utilisation of the land adding to the cost of homes?

**Mr Pyers**—If I could respond to that—

**Mr NEVILLE**—And could you compare Canberra, with your knowledge of, say, something outside Canberra?

**Mr Pyers**—I would concur with what you said. Looking at Canberra and perhaps looking at Sydney by way of comparison, we have to bear in mind that the costs are constructed in a different way in each jurisdiction due to planning processes and various taxes. I can put various taxes, stamp duties and fees into the mix in that regard as well. These costs are adding to the cost of housing and make up a component of the cost of housing. I would not be able, off the top of my head, to put an exact figure on that. I can certainly take that on notice and provide you with some figures, but you need to consider probably three components. They are the cost of the raw land; the cost of the various taxes and fees, and I would throw in planning fees, however they are expressed, into that mix; and time. I will draw an immediate example from the ACT's planning

process. They have what they call a ‘high quality sustainable design process’, which is of particular concern to members of the HIA in the ACT who design and construct extensions. They have informed us, and we have had discussion with the ACT government along these lines, that for a \$100,000 extension on a house, say, in Downer or Dickson, the high quality sustainable design process would add two per cent to five per cent to the cost. By the time you consider the costs involved in that process, a \$100,000 extension might become a \$102,000 extension or a \$105,000 extension. You have got those issues in terms of planning fees and costs in the ACT. Comparing that to Sydney or to New South Wales, I understand that just prior to the New South Wales election, the New South Wales government put a \$15,000 infrastructure levy per block on developers—I stand corrected, but I understand that that is the case. Obviously a \$15,000 infrastructure levy is going to find its way from the developer to the builder, to the builder to the client.

**Mr Morschel**—We might be able to submit that to you. The HIA has done a chart of the fees, charges and costs that apply in the different states.

**Mr NEVILLE**—That was going to be my next question.

**Mr Morschel**—They are highest in Sydney.

**Mr NEVILLE**—I sit on another committee that is dealing with airport charges. It is interesting that the various players can quantify what it adds to an airline ticket right down to the nearest cent of local government, state government and federal government charges. It would be interesting to know, firstly, what you could give us in that field; but, secondly, where the NCA intrudes onto an area, to what extent it adds to the cost or ameliorates the cost. Or is it cost neutral in terms of its involvement?

**CHAIRMAN**—You were going to take part of Mr Neville’s previous question on notice.

**Mr Pyers**—We will take both parts of the question on notice and provide the information.

**CHAIRMAN**—Does that answer your question, Mr Neville?

**Mr NEVILLE**—Yes, for the time being.

**Mr Morschel**—Our members would say that as a comparison, going through the process of public notification, appeals and objections that are typical of the ACT system and other local jurisdictions is more costly than the negotiated process.

**Mr NEVILLE**—I just have a supplementary question: does the NCA add another layer of cost to that in an area where the NCA is involved?

**Mr Del Rio**—It is very difficult to strip out various layers because where the NCA is involved the developer knows about it. That issue gets factored in as part of the design process.

**Mr NEVILLE**—I think you missed my point. In the calling for of applications, advertising and all the bureaucratic processes, does the NCA add another layer to that cost in areas where it is involved?

**Mr Del Rio**—That is what I will try to explain. Where the NCA is the approving authority, the process is much more simplified than it is where the territory is the approving authority. Where the territory is the approving authority, the NCA publishes what is generally known as a development control plan, or some special requirements. That is a factor to be considered as part of the territory's deliberations on the DA process.

**Mr NEVILLE**—By the client or by the ACT itself?

**Mr Del Rio**—By both. The client would usually submit a design which conforms with the development control plan process. So it is not a huge additional cost, it is simply an additional factor which gets fed in at the time they do the design. To strip that out and quantify it would be extremely difficult.

**Mr Morschel**—The projects I am thinking of which have proved difficult for our members are those where the territory's plan requirements, or the local planning authority's requirements, were appealed against, not the NCA's requirements.

**Ms ELLIS**—I would like to refer to paragraph 6 of your submission, the response. In the first part of that, you state:

The HIA believes that the Federal Government should play a much greater role in urban renewal programmes and sustainable planning and transport policies. The NCA's role in promoting the National seat of Government provides an ideal framework to promote such policies as they are developed and delivered in the ACT.

Could one of you expand on what is meant by that?

**Mr Morschel**—The view of the HIA nationally is that, as we have said there, the federal government should have a greater role in planning, transport and development. Some of the greatest issues for our members in the future are to do with the characteristics, size etcetera of the cities and the urban growth in the country.

**Ms ELLIS**—I don't disagree with that statement.

**Mr Morschel**—We felt that here, with the NCA having responsibilities in the long term for the open spaces of the territory which are potential development areas, the ability of the authority to play a role with the territory in where the city grows, and how it grows, is very important. We felt that, in developing the policies which support that, the NCA could also play a role. The territory has an opportunity, if it does take up open space land for future residential, to set standards of urban development for which the town had a reputation many years ago. It seems to the professional planning and architectural circles to have lost that reputation a bit over the years. It would be an opportunity to get that reputation back.

**Ms ELLIS**—Perhaps we can expand this a bit further. When you talk about development on open space, that open space may not necessarily be non-territory controlled land. What you are saying is that, in urban renewal programs—and that has a multitude of meanings—and in development of urban sites within the ACT, the NCA should have more of a role than they currently have, even though we are talking about territory planning and development.

**Mr Morschel**—I am sorry?

**Ms ELLIS**—I am a little confused about exactly what you mean.

**Mr Morschel**—I meant new land.

**Mr Del Rio**—Perhaps I can explain.

**Ms ELLIS**—Please do.

**Mr Del Rio**—If, for argument's sake, the territory wishes to develop Stromlo Forest or Corin Forest, and its planning process says that this is where they choose to build a community in the future, they cannot do it because it is contrary to the National Capital Plan. What we are trying to articulate is that there needs to be a working towards a common objective of saying: 'This is how we believe a city of the future should look. This is what we believe the important transport issues are.' From an industry perspective, we believe the federal government has largely abdicated that role to the states. We believe, as an industry, that the federal government needs to take a step back and have a bit of vision about how our city should look.

**CHAIRMAN**—Do you mean states and territories?

**Mr Del Rio**—No.

**Ms ELLIS**—Yes, he means states and territories.

**Mr Del Rio**—I am sorry—yes.

**Ms ELLIS**—Are you referring to the stuff done under the Better Cities program, for argument's sake?

**Mr Del Rio**—Yes, I am.

**Ms ELLIS**—I don't deny that that is a good idea. Please do not misunderstand me—I am not criticising that.

**Mr Del Rio**—Sure.

**Ms ELLIS**—I am trying to get into my head how, in the ACT's instance, that would work. Are you saying that this would only happen where the NCA has a direct role in the use of the land?

**Mr Del Rio**—No, absolutely not. I am sorry.

**Ms ELLIS**—Would you explain to me what you mean by the NCA's role in urban development and urban renewal in Canberra, given that we have a territory role in those very functions? I am not debating the Better Cities stuff; that is good stuff. To what degree do you

want the NCA to make us a bit of a test tube? What do you have in mind? This is a bit misleading to me.

**Mr Del Rio**—The bigger issue is that, if the NCA chooses to, it can totally restrict the future development growth of this city. That is the key. We need to make sure that the NCA does not do that. The NCA could agree to change the planning process in the National Capital Plan to allow for that to happen. However, there is no suggestion that the NCA should take a direct role and say, ‘We believe this area should be divided and look like this.’ What the NCA needs to do is allow development to occur in that area.

**Ms ELLIS**—That is okay. Further into your submission you make a statement in relation to Gungahlin Drive which I have to say I take very slight exception to. You have a paragraph there about the Gungahlin Drive extension. Your concluding comment in that paragraph is that the delays to that work appear to result from an inability of opposing views from the territory and the Commonwealth governments to be cooperatively resolved. I would debate that slightly. We had a discussion with a witness earlier this morning about this very example. There seem to have been more than just two opposing planning authorities here. There were, in fact, two opposing political views, given that the NCA’s role and decision in that process changed at almost the same time as the ACT government changed. You would have to agree that the conclusion to be drawn from that exercise would be broader than your statement reflects. Given that, and given the current dynamics, how do you suggest that the interrelationship between the NCA and the local authorities can work for the Better Cities-type outcome, which I agree we would like to see everywhere? I am talking not just about political dynamics but also about statutory dynamics which allow that to happen.

**Mr Pyers**—Perhaps I could kick off the response to that. In my response to one of Senator Lundy’s earlier questions, I said that these matters are best resolved at the operational level. We are seeing evidence of that now. The ACT government held a major forum last week regarding their spatial plan and the NCA was a keen and welcome participant in that forum. At the end of the day, those issues are taken forward and resolved by the NCA understanding the direction in which the territory government is going. As Mr Del Rio said earlier, if that means changing the National Capital Plan to allow for development in areas like Stromlo, it means giving serious and proper consideration to those issues. My response to that—I will defer to my colleagues if they wish to add anything—is that it works at the operational level. We mentioned Gungahlin Drive just as an example, for whatever reason, of things going off the rails.

**Ms ELLIS**—It is a valid example.

**Mr Pyers**—At the end of the day, I suppose you can debate the whys and wherefores and the hows and whys that occurred. I do not want to get into the politics of it. We see it merely as an example of how things can go off the rails, and why that reinforces the point that greater operational protocols and greater cooperation at that level is probably the key to ensuring there are no repeats of those issues.

**Ms ELLIS**—I do not necessarily want to get into the politics of that either. However, the reality is that certain things occurred and we cannot avoid it because we might be getting into the politics of it.

**Mr Pyers**—Exactly, yes.

**Ms ELLIS**—Certain things occurred and we need to address them so that those certain things cannot, or will not, be encouraged to exist into the future. I am sure that you would agree with that.

**Mr Pyers**—I do, yes.

**Mr Del Rio**—What our submission is trying to get at is that the way that you resolve that is by working on a cooperative basis to develop a transport strategy for the city. We do not have a position where one person says, ‘This is where the road is going to go,’ and another person says, ‘Well, I do not want it there.’ As Michael said, we believe that there is a good relationship at an operational level. The spatial planning process that is currently being undertaken by the ACT government is a significant process. The NCA has been a participant in that process and one would hope that they will support the outcome of that process. The difficulty is that, if the outcome is something that the NCA does not agree with, we could have wasted a lot of time and resources. Ultimately, what we need to happen is an agreement to work together to develop the key strategies. That is what that paragraph is intended for. It is not meant to indicate that the NCA will determine what that strategy is—even though, ultimately, it does have that legislative power.

**Ms ELLIS**—It is for that reason that I wanted to discuss it to clarify that. In the same part of your submission—and I do not take contention with this; I just want you to explain it to me a bit more—you talk about the HIA believing that:

... the results of the awareness raising programmes for Australians to better know and understand their National Capital over recent years have been beneficial for the Territory.

Absolutely.

The large influx of tourists and students has had a positive impact on the economy.

Absolutely. Then you go on to say that you recommend:

... the NCA’s programmes be maintained and extended. It is important for the NCA to develop closer links with the Territory tourism bodies

And I take it you mean for the NCA to be properly resourced to achieve this recommendation.

**Mr Pyers**—Indeed.

**Ms ELLIS**—How do you see that relationship now? Given that you have an opinion that the NCA should have that role, what do you believe we should be doing to improve that interrelationship?

**Mr Pyers**—I would kick off by saying that, in going forward, it is a similar issue to what we say about planning processes. If you talk about tourism and the important aspects of tourism to the national capital or to planning, it is by operational cooperation these issues are best resolved



because, whether you are talking about tourism or planning, at the end of the day we cannot have the two authorities trying to pull the territory in different directions. As a matter of overarching principle, we would say that operational cooperation is the key to it.

**Ms ELLIS**—You very strongly submit that the NCA, as well as having this planning and overseeing role, should also have this promotional role?

**Mr Pyers**—Of course, yes. On any view of it, its promotional role is working well at this point in time.

**Ms ELLIS**—I do not want to get into this debate, because we could be here all day just talking about this, but I want to comment that in terms of the cost of building in the ACT, I received an email yesterday from a gentleman whose house went up in flames in the fires. His 30-square architecturally designed house is going to have to be replaced by a 22-square project house purely and simply—as he perceives it—because of the increased cost of rebuilding. Insurance and everything plays a role, but he is in absolutely no position—in dramatic terms—to replicate anything like what he had. I know that there are many elements to it.

**Mr Pyers**—I will quickly respond to that if I can. There have been a number of issues—and we are working with the ACT government on those issues—regarding cost, particularly as a consequence of the bushfires. I think that there are a number of things to be considered. Firstly—and I am not talking about your specific example but in general terms—a lot of people who lost their houses in the bushfires are not looking to replace them with something identical, they are looking to upgrade, and that is a fair and reasonable thing to do. But in an upgrade, at the end of the day, if you are looking to build something bigger and better with better finishes, then that may indeed cost you more.

**Ms ELLIS**—Absolutely.

**Mr Pyers**—If you are looking to move from a project home to an architecturally designed home, then that may cost you more. The other issue which we are seeking to resolve in that regard at the moment is that people have been making inquiries about how much it costs to build a particular type of home and have been given—as an indicative figure only X amount per square meter. But X amount per square meter does not necessarily translate into costs in terms of finishings and other things.

**Ms ELLIS**—I understand that very well.

**Mr Pyers**—The final comment I say in response to that is that one of the issues in the building industry in general terms at the moment is a shortage of skills. As I understand it, the average age of bricklayers at the moment is 47 and climbing. That means that there has been an increase in cost in terms of the labour component, but we would still say—and we are happy to provide you with the figures—that, if you look at the component cost of your typical house and land package, land and related charges are at about half and that in general terms, building costs generally go with CPI. But obviously they are subject to those specific issues that I raised.

**Ms ELLIS**—That is fine. Thank you for that. We are not in a position to debate it, but this gentleman is actually having to downgrade dramatically. I just needed to say that for his benefit.

**Mr Pyers**—That is fine. I understand that.

**Mr Del Rio**—Could I just make one comment in response to your earlier question about the role of the NCA. One of its statutory obligations is to foster an awareness of the national capital.

**Ms ELLIS**—I understand that.

**Mr Del Rio**—That is an extremely important role. It is something that we believe, as an industry, even though it does not touch directly on the housing industry, has been underfunded in recent times.

**Ms ELLIS**—I think the stuff that the NCA has put out in promotional material is excellent—it is just that I am terribly aware of the frictions.

**CHAIRMAN**—Thank you for your attendance here today. If there are any matters on which we need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence, to which you may make editorial corrections.

[11.37 a.m.]

**HEWITT, Sir Lenox (Private capacity)**

**CHAIRMAN**—Sir Lenox, good morning and welcome. It is most pleasant to see you again before this committee. These hearings are legal proceedings of the 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 has received submission No. 30 from you. Are there any corrections or amendments you would like to make to your submission?

**Sir Lenox Hewitt**—I would like to add a postscript. At paragraph 7 of my submission, I said that there is as yet no indication whether or not the National Capital Authority has accepted recommendation 4.27 of the first report of this committee. That recommendation states:

That the Australian Capital Territory (Planning and Land Management) Act 1988 be amended to require public consultation by the National Capital Authority in relation to works proposals in Designated Areas.

My postscript is that I understand that the response of the authority, confirmed by the minister, has in fact been tabled in the House of Representatives. I have not seen a copy of it.

**CHAIRMAN**—I understand that it was tabled in the Senate last week, whilst we were out of session. We should be able to obtain a copy and forward it to you.

**Sir Lenox Hewitt**—I really wanted to refer to it this morning because I understand from oral second-hand advice to me that the recommendation of the committee has been rejected, and I further understand that it has been rejected—

**CHAIRMAN**—I am informed that it was just recommendation 4.

**Senator LUNDY**—Perhaps I can help, as I have the government response in front of me. Recommendation 4, in which the committee recommended that the act be amended to require public consultation, was not supported by the government.

**CHAIRMAN**—But it was not the whole report.

**Sir Lenox Hewitt**—No. I am addressing myself purely and simply to this recommendation—4.27. Did you say that it was rejected?

**CHAIRMAN**—It was not supported.

**Sir Lenox Hewitt**—That is a euphemism meaning rejected—and rejected, I take it from what you have said, without reason stated or given.

**Senator LUNDY**—That is correct. The government response acknowledges that as far as possible proposed works in relation to residential development should be notified to local

residents to the same extent that they are notified by the ACT government. It goes on to articulate the processes that currently exist but it does not recommend any amendment. So 'no change' is the response from the government.

**Sir Lenox Hewitt**—I would like to add that postscript to paragraph 7 of my submission to bring it up to date.

**CHAIRMAN**—Yes, I appreciate you doing that. That would be good, and then we can that approved.

**Sir Lenox Hewitt**—Apart from that, I hope my submission has been before you and your colleagues in sufficient time for you to read it.

**CHAIRMAN**—It has, indeed.

**Sir Lenox Hewitt**—I hope and believe that it speaks for itself.

**CHAIRMAN**—Yes. It is mostly clear and concise, as we would expect. Would you like to add that addendum to your report?

**Sir Lenox Hewitt**—If it is in the transcript, that should suffice. Hopefully, people will read it in conjunction with the transcript.

**CHAIRMAN**—That would be fine. Is there anything else you wish to add before we proceed to questions?

**Sir Lenox Hewitt**—No, I am in your hands.

**Mr CAUSLEY**—On the issue of public input into planning and the appeal system, you would, undoubtedly, be aware of planning acts in other states where residents and citizens have a right of input into a plan that has been drawn up and a right to comment et cetera and also a right of appeal if a decision impacts upon their property. Coming from New South Wales I can say that, while that is there, it has become a fairly expensive exercise and in some instances a bit vexatious, too, as far as appeals on planning decisions. Do you see a simple method of getting an appeal system into a planning act without getting into that complicated and expensive legal avenue?

**Sir Lenox Hewitt**—My experience as a victim—as a developer and constructor—is confined to Queensland, New South Wales, the ACT and Victoria. The worst of my experiences was in Victoria, which took six years and ended in the Victorian Administrative Appeals Tribunal and was an extremely expensive affair for me. But it resulted in the approval of the plans that we had submitted and the concept that we had put forward to the authorities some six years earlier. I do not see any means by which the process will be shortened in the interests of the community and people as a whole until such time as the first approving authority is prepared to take responsibility for its actions. My experience of local authorities is that they are not prepared to make a decision because they may upset individual voters and, if it is not the concern of an individual on the committee, if it is not part of his constituency, at least he must support a colleague because he, in turn, will require support in future of the first approving authority in the

place. If you will permit me to add, from personal experience, now that I have considered it—and my son, too, in conjunction with whom I did all this in these states—I do not think we will ever do any more.

**Mr CAUSLEY**—It is a vexed question because, if you take it away from local authorities, which in New South Wales anyway is local government, then you get into the problem of allegations that people are buying favours to get developments through et cetera. So it is a vexed issue as to what the best process is. In the past in New South Wales, if there were disputes about farming land, there was a land board, and people appointed to that board could make decisions. It was a fairly simple process. I do not know whether there is a possibility of getting a similar process to that, where a dispute can be heard without going into all the legal processes.

**Sir Lenox Hewitt**—That land board must have been some time back.

**Mr CAUSLEY**—It is still there.

**Sir Lenox Hewitt**—My only experience with agricultural land across the border from here, where we have done a number of subdivisions and developments, is that, whereas local authorities and shires were in the past—over the last 20 years—reasonably responsive, it has now reached the stage where it is no longer feasible to proceed.

**Mr CAUSLEY**—They did not deal with developments; they dealt with disputes over boundaries, fences and things such as that.

**Sir Lenox Hewitt**—Yes.

**Senator LUNDY**—Thank you for your submission. For the benefit of this inquiry, I would like you to walk us through your experience of the lack of consultation surrounding the changes that took place near your residence and near properties in which you had an interest.

**Sir Lenox Hewitt**—Probably Mr O’Sullivan, when he appears before the committee, can speak about that with greater firsthand knowledge because he owned a property that was adjacent to the one that is dealt with in chapter 4 of the committee’s first report. But I shared and share his dismay that there was absolutely no notification other than waking up in the morning and discovering that the bulldozers had razed the site and completely destroyed everything that had been there—not only the building but also the trees, shrubs and everything else—leaving a bare, brutal landscape. My own property was two down from that.

None of us had the opportunity to consider what was proposed. Personally I thought—if I may say so, with respect—that the committee’s previous report was very delicate in its wording and conclusion, but I had no doubt that the act of the authority which had approved the proposal was in contempt of parliament. It was a decision that flew in the face of the fact that this committee had been entrusted by the parliament to examine this whole precinct at the ministerial entrance to this great edifice, Parliament House. I found it impossible to believe that this could happen—that the parliament could be treated with such utter contempt, let alone the residents nearby who were affected.

**Senator LUNDY**—In your submission, you make the point very strongly that the NCA changed their view about the treatment of the land subject to DA39, and you quoted the NCA as saying:

... as a consequence of the newly elected ACT Government's announced restrictions on dual (and triple) occupancy development ... and intent to prepare local plans.

What is your response to that change of heart? Obviously, I am asking you to extrapolate on the view expressed in your submission that there has been no evidence presented by the NCA to justify that change in heart. But there were quite well-articulated reasons previously presented by the NCA to justify the transfer of the land subject to DA39 back to the ACT government.

**Sir Lenox Hewitt**—In paragraph 3 of my submission I recorded what the National Capital Authority said were its reasons for not passing jurisdiction to the territory—which had been its intention. It gave as a reason that it was a consequence of the newly elected ACT government's announced restrictions on dual and triple occupancy development and intent to prepare local plans. Having been a public servant, I stood back and wondered whether it meant what it said. No doubt the ACT government will have something to say on this whole question but you asked for my reaction. It seemed to me that the National Capital Authority was setting itself in defiance of a democratically elected government's decision. As I prepared this I found it very difficult to believe and as I look at it I still find it very difficult to believe. No member of my staff, when I was in departments of the Commonwealth, would ever have got away with a statement like that—even in an internal departmental memorandum. The National Capital Authority, which is an unelected body—and which is notorious, in my belief, for not giving reasons for its decisions—is setting itself up in flagrant defiance of a democratically elected government of the people. That is my reaction to it. You asked me the question and there is no use beating about the bush.

**Senator LUNDY**—I ask this question in the context of the evidence and findings of the DA39 inquiry. The effect of this change of heart of the NCA is that more of the dual occupancy style of development will perhaps be able to be built in that precinct than under the proposed ACT plan but there will be far less opportunity for other types of new development, particularly on the State Circle frontage. Are you in a position to reflect on the inconsistency between those rules and parameters and every other residential precinct in the ACT?

**Sir Lenox Hewitt**—Yes, to the extent that I cannot see why this isolated and now unique pocket of residential land should be subject to any different requirements—it should be subject to the same provisions for appeal against the decisions in the first place—to the rest of the territory's residential land.

**Senator LUNDY**—In the context of the government's rejection of recommendation 4 of that inquiry, how do you, as a directly interested stakeholder, feel about having to be subject to different rules and inequitable consultative requirements compared to the rest of the ACT? How do you feel about there being no mechanism to appeal decisions of the NCA?

**Sir Lenox Hewitt**—In the absence of any reasoning to support what you have read out—which is a sort of hallmark of much of the authority's actions—it is very difficult to do other than say that it is inadequate and insufficient. You said that it would be a good idea, or

something to that effect, if they did consult. But that is only half of the story. People living on the south side of National Circuit not only have to conform with the territory's requirements but also have the right of appeal to the Administrative Appeals Tribunal process, which I have used in relation to State Circle. That response of the government—clearly the response of the authority—is inadequate, because they are not required to consult in the first place. But the real gap or lacuna in that response is that there will still be no right of appeal for the people in this pimple of housing in the ACT, and that is grossly unfair and unjust—the territory administration recognises it, and it is not good enough.

**CHAIRMAN**—That brings to a conclusion your contribution here today, Sir Lenox. On behalf of the committee I thank you for your attendance. 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 may make editorial corrections. Again, thank you for your attendance here today.

**Sir Lenox Hewitt**—Thank you.

[12.00 p.m.]

**DAVEY, Dr Neil William, Committee Member, Canberra Community Action on Acton Inc.**

**HABERECHT, Mr Noel Ivan, Secretary, Canberra Community Action on Acton Inc.**

**KERSHAW, Mr John Miles, President, Canberra Community Action on Acton Inc.**

**WACE, Mrs Margaret Dorothy, Treasurer, Canberra Community Action on Acton Inc.**

**CHAIRMAN**—Welcome. 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. The committee has received submission No. 8 from Canberra Community Action on Acton Inc. Are there any corrections or amendments you would like to make to your submission?

**Mr Kershaw**—There were two small typographical errors, but I do not think they need to be corrected here because they do not substantially change the intent and content.

**CHAIRMAN**—Do you want to proceed to questions or do you have something else to contribute?

**Mr Kershaw**—I am happy to take questions, but I would also like to clarify and expand on a couple of points.

**CHAIRMAN**—You can make an opening statement with those points that you have taken from your submission, or if you want to expand on that you are welcome to do that as well.

**Mr Kershaw**—Our organisation has been in existence for nearly 10 years and we have been dealing with the National Capital Authority at a community level. We are probably the longest-serving and perhaps the only community group that has actually been dealing directly with the National Capital Authority as opposed to, say, the territory government planning authority, because we have been particularly interested in Acton Peninsula—which members are probably familiar with—the site of the former Royal Canberra Hospital, which of course was territory land. I have here a map of the central area. It was subsequently used as the site for the National Museum of Australia and there was preservation of some remnant buildings and landscape from the former hospital, now listed by the Australian Heritage Commission.

In that regard, we are concerned that, although the National Capital Authority are an authority, they seem to be moving away from the responsibility that the community would assume would go with an authority. The perception is that they are enjoying the power without the responsibility of the roles that they are to discharge under the act that governs them. This is in relation to local community issues, and we represent essentially residents of the ACT.

Initially, the point in our submission relates to the structure of governance in the ACT. We feel that has been highlighted by recent issues, particularly the ACT government's attempt to develop



what they call a 'spatial plan', which looks at the way the ACT may grow—or not grow, depending on their policies and the availability of natural resources—in the future; the way that that clearly extends over the border into New South Wales; the pattern of growth in the territory over the years; and the way that the central national area has largely been put together and is now planned, if you like, to a large degree.

Secondly, as residents we are all very familiar with and some of us have been affected by the recent bushfires and watched in horror the lack of coordination between the three governments—the New South Wales government, the territory government and the Commonwealth government—keeping in mind that the large area of land to the west of the city that burnt is designated land under the Australian Capital Territory (Planning and Land Management) Act. Under that act, the National Capital Authority has some duties in relation to the care and control of that land—duties that I think an average member of the public would perceive as extending to safety issues and so on—but what we find instead is that the National Capital Authority played little or no part in the matter of the bushfires and the lead-up period to it. Now that the ACT government wants to look at what to do with that burnt-out land, and perhaps look at it for residential purposes, the National Capital Authority have come along and said: 'Hang on; that's land over which we have control. You will need to defer to us.' It is a repeat of other things that have occurred, and I think it is very galling to citizens of the territory to find that that is happening when in fact we are obviously a self-reliant and self-determining city these days.

In that regard, we asked: why is the ACT structured the way it is? Why is the ACT like a state? Does it have the characteristics of a state? It does not have the geographical proportions of a state; it does not have the industry and agriculture of a state. It was established under acts of parliament in the early days to establish a seat of government, and that was very laudable. But why do we have this incredibly complex overlap of roles between the New South Wales government—as we sit in New South Wales like an island, like Berlin in the old Germany—the ACT government and the Commonwealth?

The concept of a Canberra-Queanbeyan city and rural district council came to mind, which we think has a lot of merit. Queanbeyan, after all, is a perfectly normal city. People live there. They are real people; they are not different. Our main water supply, for instance, at Googong dam is in New South Wales—and that is a very topical issue at the moment, in the drought. We have issues of national parks bordering on the ACT. They are called national parks but are obviously controlled by New South Wales. We see continuous wrangling going on between the planning authorities. Although some of the submissions to this inquiry we have looked at support the continuation of the national capital and the dual system, it seems to be self-serving from the point of view of those who are involved to suggest that it should continue that way. Efficiency, community involvement and what Sir Lenox Hewitt was talking about are disregarded, and it is as if this piece of land—this territory, this region—is somehow different and can be subject to some organisation which is not elected and so on.

Obviously, this is notwithstanding the fact that everybody I think agrees about, which is that the central national area moves us—and all Australians—in our hearts. I am now holding up an aerial photograph of what we see as the central national area. It is the eternal city of the south, a truly emotional and wonderful environment, in which we are lucky to live. But it obviously needs to be protected by the Commonwealth of Australia. That is why it was established and,

albeit with some issues to be resolved, it is an exemplary plan worldwide. I mention in relation to the bushfires, by the way, the lack of coordination of the emergency services in particular. The strange creature that the ACT government called 'the joint emergency services group' seems to have failed—subject to the evidence coming out of the various hearings that are being held—in coordinating and making that bushfire fighting and prevention efficient. So that is a general statement from us, as members of the ACT community.

In relation to issues and events that we have observed over the last 10 years, we have noticed that the National Capital Planning Authority, as it was—subsequently the National Capital Authority—has been largely affected by very powerful government ministers and departments within the Commonwealth, almost to the point of being contrary to the act. An example, of course, is Acton Peninsula. The moving of the National Museum from its designated site at Yarramundi Reach to Acton Peninsula, further down the lake, was objected to by all elected representatives involved in the ACT and by the National Capital Planning Authority itself, but somehow or other government departments or bureaucrats or whatever seemed to push this scheme forward. We believe it is a laudable institution, obviously, but the result is far short of what could have been achieved in the national capital and in the national capital's interest. We believe the project was underfunded to the point where we look from the lake and see the backs of the buildings. We see service entries and a service road, simply because, unlike the Sydney Opera House, service traffic and pedestrian traffic are not separated vertically at the National Museum, so the service traffic is forced to go around the edge of the lake, to avoid people approaching from what you might call the land side.

We also saw the Department of Communications, Information Technology and the Arts completely override a development condition of the variation to the National Capital Plan allowing Acton Peninsula to be changed from territory land to national land and to have an institution put there. A development condition in relation to car parking—a mandatory requirement in relation to car parking—was completely ignored and obfuscated by the Department of Communications, Information Technology and the Arts in that the car park is now on the surface whereas it should have been concealed in structures and underground. That was a development condition. Everywhere else in Australia developers and individuals have to abide by development conditions from planning authorities, despite budgets. So we have seen that occur, and it has obviously degraded some of the prime land on Acton Peninsula. On that point about the car parking on Acton Peninsula, the National Capital Authority's pathetic response in the end was that the development condition did not say when the car parking had to be concealed. No other planning authority in Australia would have got away with that, because all the rest are open to the public and appeals procedures are involved.

In relation to Acton Peninsula, we have seen a very confused relationship between the Australian Heritage Commission and the National Capital Authority. It was decided by the Australian Heritage Commission to list the remnant buildings, a small 1940s building used for a hospice and some established introduced species of landscape on the northern and perhaps the most desirable side of the peninsula, looking into West Basin. When the National Capital Authority sought expressions of interest for the use of those buildings—which are now vacant because the hospital was closed—despite the exemplary place report produced by the Australian Heritage Commission, the National Capital Authority did not include health as a potential use for those buildings, even though they are quite discrete from the National Museum and are surrounded by separate plantings and also despite the fact that the Australian National University

made a very strong submission for part of its medical school to be housed there and to be contiguous with its campus, as planned originally by Walter Burley Griffin. We believe that that is a falling down in the responsibilities of the National Capital Authority's role.

Preceding the construction of the National Museum, we saw the implosion of the Royal Canberra Hospital on Acton Peninsula, which tragically resulted in the death of young Katie Bender. At the request of the coroner, our group made representations at the inquest into her death. We particularly mentioned the fact that the National Capital Authority appeared, although it is required under the act to have certain duties of care in relation to designated land, national land and water, to have done nothing. It simply laid it off, under a licence agreement, to the ACT government. We believe that any reasonable person reading the Australian Capital Territory (Planning and Land Management) Act 1988 would deduce that the National Capital Authority has some very strong prerogative duties to ensure the safety of the public—and other facilities, including this building we are sitting in—in such an event and to monitor all aspects that would protect those characteristics.

I am advised by counsel for the Bender family that the Commonwealth has made no contribution to the Bender family in the final settlement of this matter. This is not because other parties were found responsible—all parties denied liability, including the National Capital Authority and the Commonwealth. We think it absolutely outrageous that the Commonwealth has ducked out of this. It is another example of its duckshoving, dog in the manger attitude to the local community. It is really appalling, and I hope that this committee can recommend that the Commonwealth look into this matter. It should look at the evidence presented to the coroner's hearings. We can certainly make that available if necessary.

Sir Lenox Hewitt mentioned the question of works approvals. There obviously were works on Acton Peninsula—the implosion and demolition were defined as works under this act. In terms of works approvals, we agree that the public consultation area of the role of the National Capital Authority should extend to works. Going back to our point about the form of governance, we believe that under the current circumstances the regional and city council that we propose for this region, sitting in New South Wales, as part of the New South Wales local government system, would not result in any diminution of the setting of the national capital, as required by the earlier acts that established this place. We see everywhere in Australia significant areas—Queensland's Great Barrier Reef and the Blue Mountains in New South Wales are two examples—that are protected not only by local people who love and nurture those areas but, through legislation, by both tiers of government, state and Commonwealth. There is no reason why that system should not be applied perfectly well to the hills and ridges and the open space system that exists in the current territory, within a local and state system rather than in this quasi state system which is the ACT.

In that regard we would see that the National Capital Authority be required to deal with thoroughly, in terms of design, development and conservation—as raised by ICOMOS in their submission—an area that extends perhaps from Russell at one apex of the parliamentary triangle across Lake Burley Griffin on Griffin's causeway axis and around the lake.

**CHAIRMAN**—Is that on the southern shore of the lake?

**Mr Kershaw**—Yes, it is on the southern shore of the lake, extending round into the office areas of the inner area, which clearly do relate to parliament and then—this line is not meant to be definitive in terms of an actual border, and I would like to leave this drawing with you, by the way—extending around State Circle down into what is known as Stirling Ridge, which is the site of the proposed new lodge for the Prime Minister. I believe we are in need of a new lodge for the Prime Minister. At least he might come and live here. The current one is on busy Adelaide Avenue. The area then extends down Commonwealth Avenue, across to Acton Peninsula, perhaps leaving out that area that we appreciate so much, the original buildings, across Commonwealth Avenue up to City Hill, down Constitution Avenue, up ANZAC Parade, obviously, round the War Memorial and back to Russell.

In reality, when you sit down and examine that area, it works. As I said, the other characteristics of the national capital setting can readily be controlled through other instruments within the Commonwealth government such as the department of the environment and natural resources and so on, as is done with the Barrier Reef and other areas of Australia.

Resolved (on motion by **Mr Causley**):

That the map presented by Mr Kershaw be tabled as an exhibit.

**Mr Kershaw**—Incidentally, it is an aerial photograph prepared by Sinclair Knight Merz, one of the groups that have made submissions to you. In relation to the land that Sir Lenox Hewitt was talking about, we agree that, as we said, works approval should be subject to appeal, but we also refer the committee members to a statement by the president of the Royal Australian Institute of Architects that landscaping in many instances can do the job of protecting streetscapes and scale of buildings in such a way that a variety of uses and scales of buildings can occur in close proximity to each other without destroying the original requirement of the significance of a site.

So with the landscape buffer between State Circle and Parliament House and the landscaping on the residential blocks, there should be no problem that that stays with what we call the local government. The local government, as I have indicated—the Canberra and Queanbeyan City and Rural District Council, for want of a better term—will obviously have its own planning department, like every other council in Australia. It will also be able to deal with land development as, say, the Brisbane City Council, which is one of the largest municipal organisations in the world, does—in its own right. As I said, the other provisions in both the state and the Commonwealth legislation should be able to protect the setting of the national capital.

**Mr CAUSLEY**—I am rather interested in your proposal. I remember clearly the debate over what type of government Canberra should have. Canberra voted for the type of government they wanted. Why do you think that they have changed their minds?

**Mr Kershaw**—Are you talking about 1989?

**Mr CAUSLEY**—I don't know the exact date.

**Mr Kershaw**—That was the time of the institution of the current act relating to self-government.

**Mr CAUSLEY**—Yes.

**Mr Kershaw**—As I understand it, most Canberrans did not want to move to that type of self-government. Whereas on paper it is a good concept—it is a city-state concept, with duties in relation to health, police, justice, emergency services and those sorts of state like roles—but after 10 years, a lot of people who see what is going on feel it may not be the right way to go. Why should we be different? In fact, in many cases this high placement of academic scholarship, if you like, on planning, in the ACT in particular, turns into talkfests that go nowhere. We do not get the results we want and we do not have the involvement we want. I think everybody would be much more comfortable really if they had a council they could get their teeth into, with the National Capital Authority looking after what we now call the National Capital Precinct—as opposed to the Australian Capital Territory. They would look after a smaller version of the central national area and designated land, and we would have the state government, with its skills, knowledge and experience, work in concert with the other two parties, to make a more efficient situation.

**Mr CAUSLEY**—Given that you now have a government though, can you see them voting themselves out of power? If the federal parliament did have the power, which I doubt it has, to come in and abolish the government, I am sure the member for Canberra would have something to say in parliament.

**Mr Kershaw**—Well she might not. As you rightly say, the ACT government was established by a federal act, as Australia was established by a British act. There would obviously be a debate—we are putting this forward for debate—but the bottom line is that it has so much going for it. Our representation would be through New South Wales, through local government, and through senators, as usual.

**Ms ELLIS**—I hate to be a little bit boring and predictable, but this is not an inquiry into self-government—in fact, nothing could be further from the truth. Mr Kershaw, with the greatest of respect to you and your colleagues, any views you have on self-government need to be made in another forum. Our time here should in fact be taken up entirely with the terms of reference we have been given. Those terms of reference refer to the planning regime within the ACT currently, its role in respect to the NCA specifically, the degree to which people wish to comment on whether the role of the NCA in those terms of reference is acceptable or not and what views people have in regard to it. Quite frankly, I would much rather our time—which is now very limited—be spent on talking about that specifically. Even though you have an interesting view about self-government, our terms of reference do not even allow us to consider it, so we really need to get back to the hub of what we are here for today, if you do not mind me suggesting that. Within your submission, you do have some critical comments and some other comments in relation to the terms. Maybe it would be best to spend the very restricted time we have left doing that.

**Mr Kershaw**—Briefly, we believed that the whole matter related so much to the structure of governance in the ACT that it was difficult to avoid commenting on it.

**CHAIRMAN**—I agree. It is something that does impinge upon it, and you are quite welcome to put that view.

**Ms ELLIS**—Absolutely.

**Mr Kershaw**—We will not go on with that. Do you want me to talk a little bit more about a couple of the points?

**Senator LUNDY**—I would like to ask some questions.

**Ms ELLIS**—I think that would be a much better idea.

**CHAIRMAN**—Once again, we are limited by time. I am sure that Senator Lundy has some brief questions. Mr Kershaw, if there is time after that you may like to table what you have to say or briefly speak to it.

**Senator LUNDY**—Your first dot point says that the NCPA itself opposed the move of the National Museum from Yarramundi to Acton. My recollection is that the NCPA at the time went to some considerable length to argue the case—

**Mr Kershaw**—They investigated sites, if you recall, Senator, including the parliamentary triangle, which, it was well-known in this town, was the NCPA's preferred site for the National Museum of Australia. They were not necessarily in favour of keeping it at Yarramundi Reach.

**Senator LUNDY**—You are quite right: they were opposed to Yarramundi Reach, but they were not necessarily in favour of moving it to Acton Peninsula.

**Mr Kershaw**—That is correct.

**Senator LUNDY**—I am very interested in your points about the breakdown in communication between the NCA and the Australian Heritage Commission. You have raised the point in relation to the adaptive reuse of the buildings on Acton Peninsula, but you have also made a couple of statements about the broader issue there and suggested—this is the way I interpreted your comments—perhaps as a way of removing the grey areas in designated areas, that the NCA's role be confined to the precinct you have outlined, while the Australian Heritage Commission and the provisions of the Australian Heritage Commission Act be used to govern the preservation of the national capital principles, heritage principles and design principles elsewhere in the ACT. Am I interpreting you correctly?

**Mr Kershaw**—Yes—along with other government bodies such as the department of environment. There is a Commonwealth department of environment, as I understand it.

**Senator LUNDY**—Thank you for that. I also note that you made several comments in your submission that relate to what I interpreted as inconsistencies in the approach by the NCA—the then NCPA—to the design principles, the commitment to the Burley Griffin plan and so forth. Perhaps most pertinent today is how that relates to the sale of Commonwealth assets and the management thereof. Can you extrapolate briefly for me your concerns about the sale of Commonwealth assets and how those relate to inconsistent management by the NCA of those precincts or assets?

**Mr Kershaw**—As I said, the NCA in some cases, I think, has been overridden by powerful departments. I have here a letter from Senator the Hon. Nick Minchin, Minister for Finance, to Senator Reid, former senator for the ACT, about a matter raised in relation to the sale of what is called the Landmark site at Barton. This was the reverse of Sir Lenox Hewitt's situation: it was land that had been previously zoned commercial and was rezoned residential and given a very high plot ratio for development, with similar construction requirements in terms of height et cetera to other areas of Canberra. Senator Minchin said:

It would not be appropriate for the Commonwealth to provide funding for local infrastructure via reduced revenue from property sales.

In the context of that, the issue was whether or not the sale of Commonwealth land should be used for national capital advancement, in the way that land in the territory was set aside as a resource—perhaps the only resource—to be made available to develop the territory, as the ACT government does now, and the council would do in the future. I believe that is a particularly interesting case because lately Commonwealth properties have been sold off and chucked into consolidated revenue, whereas clearly the whole concept of the ACT is that the land is a resource to be used for the advancement and development of the ACT.

This particular case is interesting because it relates to land alone—as opposed to land and buildings, some buildings of which have been sold on a lease-back basis, so that the land eventually reverts to the Commonwealth. This is despite the leasehold system, which I understand now is virtually freehold these days. So that particular block of land has gone from the Commonwealth now. Not only that, there is an issue of concern about the sale price obtained for that land, even though it was sold at auction. It is well known in this town that the price was extremely low. The price was \$18 million, for what is in fact nine acres of prime lakefront land, facing east. It obviously had the best residential potential in the ACT. The matter of the sale price of this land is obviously a very contentious issue and may go beyond the role of the NCA.

**Senator LUNDY**—Could you please tell me what the designation is of that land? Who has control of that land? Is that on NCA land or is it designated land?

**Mr Kershaw**—It is designated land and it was national land because it contained the old wool shed offices—the fibro sheds—that public servants worked in at one stage. The development approval was dealt with by the National Capital Authority and it remains as designated land.

**Senator LUNDY**—The final question that I have relates to your point made about the relocation of a hospice to Grevillea Park. You make the comment that this represents:

... an astounding lapse of understanding of the Walter Burley Griffin's axial design for the National Capital, by the placing of this building right at the point where Griffin's Causeway transport crossing meets the north shore of Lake Burley Griffin.

I am reasonably familiar with the plan, but can you put the significance of that decision in broader terms?

**Mr Kershaw**—This flows directly from our involvement with Acton Peninsula. We wanted to keep the hospice on Acton Peninsula but the perception was that, because the land was going to

the Commonwealth and the National Museum was moving to Acton Peninsula, all the land on Acton Peninsula had to be used for the museum. In fact, as we have said, there is a discrete area there which is quite easily used for mixed use.

The hospice was relocated to Grevillea Park which is lakeside land below Russell, south facing onto the lake, extremely exposed to the south-west winds across the water and isolated from elements of the community. We were originally told by a social planner that Acton Peninsula was too far away from everything to be useful for a hospice and then we find that it was placed there. We were absolutely astounded to find that it was placed right on Griffin's missing axis.

In the early days, Walter Burley Griffin's causeway axis was temporarily deleted from the works to be implemented but it remained as an essential element and is often referred to in lots of studies, including the current National Capital Authority's Griffin Legacy project that is running at the moment. Griffin envisaged this crossing, along with another crossing that went across from Lennox at the back of the Hyatt hotel to Acton Peninsula, as being part of the unifying transport system that prevented the divide of the city from Civic to parliament that is now causing trouble.

The opportunity is there to have that axis free for construction of a future transport axis which would reduce traffic in the parliamentary triangle because, at the moment, many trucks take a direct route across King Edward Terrace in front of the National Gallery, National Library and the High Court causing all sorts of trouble in the parliamentary triangle in terms of access for pedestrians; noise, pollution, dust, vibration, et cetera. In terms of Griffin's plan, he proposed an inner-city light rail system or tram that linked north and south. We now see—and we refer to it in our submission—the growth of office complexes in York Park near Parliament House and at Canberra Airport which are, in a way, largely unplanned because they are not near any kind of commercial centre for the users to go shopping or to enjoy residential amenities et cetera. Both fragment the city and detract from Civic in a way.

Those two crossings were Griffin's approach to dealing with the unification of the city, and, by their deletion in the early days, this split city has emerged. The option to keep that crossing unimpeded by a building is obviously important and now acknowledged by the NCA. In amendment 36 to the National Capital Plan to allow that hospice to go there at Grevillea Park, not one mention is made of Griffin's plan. Whereas in all the other variations to the National Capital Plan such as the Acton Peninsula one, a lot of space is given over to the background of Griffin's planning. To me, this is an astounding lapse perhaps caused by underresourcing, underfunding, lack of professional expertise or, again, political interference with respect to the committee on this matter of the hospice at Grevillea Park.

**Ms ELLIS**—This follows from Senator Lundy's discussion with you about your comments in relation to the sale of assets. You mentioned the Landmark site. There was a sale of fairly large blocks of land around the town—quite unannounced—which had an effect on the local planning process at the ACT level by the Commonwealth. One of the largest sales was a very large block down in Tuggeranong, which you are probably aware of. What is your understanding of the current jurisdiction over that block in terms of development?



**Mr Kershaw**—I am not exactly sure. It is of interest that the same developer developing that block is developing the Landmark site for a massive office development in Tuggeranong, which many believe is duplicating the office space that is already there for Centrelink.

**CHAIRMAN**—Thank you. That brings to an end the contribution of the Canberra Community Action on Acton group today. I thank you, Mrs Wace, Mr Jack Kershaw, Mr Neil Davey and Mr Noel Haberecht for your presence and your contribution here today. If there are 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 may make editorial corrections. On behalf of the committee, I thank you again for your attendance.

**Proceedings suspended from 12.42 p.m. to 12.58 p.m.**

**GRIFFITHS, Mr David Colin, Heritage Officer, National Trust of Australia (Australian Capital Territory)**

**TAYLOR, Professor Ken, President, National Trust of Australia (Australian Capital Territory)**

**CHAIRMAN**—Welcome. 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 contempt of parliament. The committee has received submission No. 6 from the National Trust of Australia, ACT. Are there any corrections or amendments that you would like to make to this submission?

**Mr Griffiths**—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 hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you want to make an opening statement?

**Prof. Taylor**—Yes. I will try to keep it brief and not reiterate what is in the submission. To precis it: we believe there is a legitimate and constitutional role for the Commonwealth in the planning and governance of the ACT and therefore a role for an organisation like the NCA. The Constitution, the seat of government act, supports this, in that within the Constitution the land in the ACT has been looked after for Australians, and that dual role needs to continue. So we believe there is a role for the NCA. We would like to see resourcing improved to the National Capital Authority, with particular reference to the national capital open space system, which in our report we have focused on. This is the heart of what this capital city needs. It is its symbolic heart. This is why it is not like any other city. There is no other city like it in the world. The one that comes nearest to it is Zurich, in Switzerland, with its open space system. There are also similarities with Kyoto, the old capital of Japan.

In 1992 a report, *Our bush capital: protecting and managing the national capital's open spaces*, was undertaken by the then Joint Committee on the National Capital. It referred to the national capital open space system as 'a valuable legacy of visionary design and planning'. We do not have all the figures, but we believe that resourcing needs to be improved for maintaining that system.

This goes to the issue of the different categories of land. Much of the national capital open space system lies in the designated land, which the authority has control over. We believe that this should continue. We are implacably opposed to that land, with its open space system, being ceded to a local government authority. What could happen in the future to that open space system leads to all sorts of questions.

**CHAIRMAN**—When you say 'a local government authority', do you also include in that the government of the ACT?

**Prof. Taylor**—Yes, that is what I mean. I am classing it as a local government authority. I know it does not see itself as that. We could say the Territory authority.

**CHAIRMAN**—Thank you for that.

**Prof. Taylor**—I correct myself. I do not want to offend anyone. We know that in the past there have been designs on this open space system by developers. We would not wish to see that that could happen in the future.

The Gungahlin Drive extension is a case in point. We believe that the NCA did have the authority to say where that road ought to go. It is in designated land. Whether you agree with a western route or an eastern route is a different matter, but they had the right to say where it would be, because they were the authority for that land. Mr Griffiths and I understand, from Tony Powell, that the historical routes—the western and eastern routes—which date from the NCDC days, were put there as options in relation to what was going to happen to the Institute of Sport. At one stage, the Institute of Sport site planning had the car parks on the eastern side and the residences on the western side. Therefore, the western route made sense, because it gave access to the car parks. But at some later stage planning was handed over and the car parks went on the western side and the residences on the eastern side, and it probably does not make sense then from a site planning point of view. I am just using that as an example.

As a planner, I understand that at a professional level the officers in the ACT planning authority and the NCA are collaborating and working well. I believe the planning of the ACT should be left in their hands—particularly with a new planning authority, from which the ACT minister takes a step back.

**Mr Griffiths**—I would like to add one other point, which might seem to be—although I do not intend it to be—slightly contradictory to that last point from Professor Taylor. It is about government processes. I think it would be fair to say that, as far as the public is concerned, the responsible ACT and federal ministers conduct affairs about the planning of Canberra through media statements—and statements about each other and to each other through the media. Those statements tend to be negatively geared rather than being positive. It seems to me that a sensible arrangement—and I have not found any evidence of such an arrangement—would be for there to be a formal Commonwealth-territory ministerial council comprising the two ministers plus their officials, which would meet on a regular basis to try and thrash these issues out in a professional and calm way rather than doing it in front of a television camera. That is my perception as an informed member of the public and somebody who has tried to find out whether such an arrangement exists. I have not been able to find out that such an arrangement does exist.

Such a model of Commonwealth-state and Commonwealth-territory arrangements is very common through virtually every portfolio that exists in the federal sphere. Because we are a federation, Commonwealth and state ministers with similar portfolios need to get together and talk about these issues. They can do that in a professional way separate from any political differences between the various parties. It seems to me that that sort of mechanism is sadly lacking and would bring a little bit more discipline and, hopefully, rigour to the way in which these matters are conducted at the moment.

**Mr NEVILLE**—You seem to paint a picture of the thing being pretty good the way it is, in terms of the relationship between the personnel of the two authorities. Are you saying that the only problems that exist are at a ministerial level?

**Mr Griffiths**—I cannot answer that because we are a voluntary organisation that is not centrally involved in all the issues that the two jurisdictions deal with. Our particular interest and emphasis has been on heritage protection and heritage identification, and, as part of that objective, we have been fairly well involved in the new processes that the elected ACT government put in place when it came to power 18 months ago. From that perspective, I would say that more needs to be done to bring the two ministerial responsibilities together. Professor Taylor has worked more closely with both PALM and the NCA and might like to answer from his perspective. We are aware that there is some consultation, but it might be more fruitful for the committee to pursue those sorts of questions with officers from both the jurisdictions.

**Mr NEVILLE**—We are interested to hear your point of view.

**Mr Griffiths**—My point of view is that I do not have an authoritative answer to give.

**Prof. Taylor**—I am on the planning and development forum which reports to Minister Corbell. He has just extended its life. It represents various groups in Canberra: community groups, development groups, the building industry and so on. In the meetings where the PALM officers have come in, statements have been made that, at a professional level, we are doing our best to work together, working at a fruitful relationship and exchanging ideas.

When it comes down to a political brawl in the newspaper or on television, this gets glossed over and many people in the community do not understand that this is happening. I still believe that planning should be left to the professionals. This is why we are having a new planning agency in the ACT with a so-called independent planning officer who makes the recommendations publicly. If the government then disagrees, it can say so, but at least people then know what is professionally being said. I made that statement on the basis of information passed to me in the meetings. People at the NCA that I know of also said the same thing: that we are working closer and closer together.

**Mr NEVILLE**—Today we have had some conflicting evidence about the NCA. We have heard the HIA say that they find their work very good, yet we have heard some individuals say that they are insensitive to the needs of people in the community. I do not think you were in the room at the time, but at one stage we were talking about boatsheds in the Acton Peninsula area.

Let us move on to buildings in which you would be interested: National Trust type buildings. What is your perception of the NCA's track record in that field? Where do you think it could be improved? In relation to buildings or projects with which you have been associated, have you observed this tension between the ACT and the NCA, at either an operational or ministerial level?

**Prof. Taylor**—I will backtrack slightly and say that, within the heritage area—and it is more than buildings; we are also interested in places and so on—it would be true to say that the performance of the NCA has improved. A number of years ago there was general concern that

there was a lack of understanding of heritage matters. They have addressed that and we have a good relationship with them on issues like—

**Mr NEVILLE**—What about this sensitivity to the public?

**Prof. Taylor**—If you look at some of the works that they have done—improving access to the lake, organising things around parliament, public affairs where it is free—

**Mr NEVILLE**—I do not mean those sorts of things; I mean in exercising their powers, not their outreach activities. Of the exercise of their powers, what is your perception?

**Prof. Taylor**—That they are a professional authority.

**Mr NEVILLE**—And that they do not generally upset the Canberra community?

**Prof. Taylor**—I am sure they do.

**Mr NEVILLE**—What we are trying to get to—

**Prof. Taylor**—But very often the Canberra community is misinformed.

**Mr NEVILLE**—If we are going to give the government, by way of our report, a new vision for the NCA and how it operates, we need to know from people like you—especially a planner like you, especially an organisation like yours that talks about heritage buildings and general natural heritage assets—their perceptions of how it can be made better. You seem to think it is pretty good. Do you feel it treats the public with sufficient respect? We have had evidence from two groups today which do not believe that—in regard to things as diverse as the buildings down here behind the ministerial entrance, and boatsheds by the lake. It seems that structured organisations like the HIA, which have a regular structured role and interface with both the ACT and the NCA, have a reasonably good relationship but that there is tension at other levels. We would like to know what your feeling is about that, because you traverse a different field from either of those two.

**Prof. Taylor**—I do not know the boatshed case, but it seems to me that down by the lake would be the place to put boatsheds. I cannot imagine where else you would put them except down by the lake.

**Mr NEVILLE**—It is not quite as humorous as we all make it, because the boatsheds have been set back quite a distance from the water. The entrances to the boatsheds have been put at the back and the side of the buildings because the gates, which would open on to the lake, would be perceived as ugly. That is the sort of tension that is there. I am trying to elicit from you, representing the National Trust, ACT division, a perception of how the NCA could be better. What is your perception of its interaction with the community of Canberra?

**Prof. Taylor**—I did suggest a few months ago that they perhaps write two or three articles over a period of time in the *Canberra Times* to explain more about what they are doing. Boatsheds apart—I am not getting into where the doors should be on a boatshed and so on—I suggested to them that some articles in the *Canberra Times* explaining how they operate, what

their mandate is, why they are there under the Constitution, what they do, how they do it, what their achievements are and what they feel they could do better would be very useful. The series of articles that PALM has just run on the spatial plan has been useful in that people feel that they are being touched. They feel that they are being given information; and understanding and saying, 'Yes,' is to do with receiving information. I think that is where the NCA could improve. They are trying.

**Mr NEVILLE**—Do you think that at the operational level they are OK but that in their outreach activity they could smarten it up?

**Prof. Taylor**—I would not use the words 'smarten up'; they could diversify and make it broader. When I suggested the articles in the *Canberra Times*, they said, 'Will you write a couple for us?' I said, 'I'm sorry; I'm just too busy at the moment.' We tend to look at the positives all the time. For example, with the work on the gardens at Old Parliament House they have bent over backwards to involve the public and to explain what they are doing. Some people disagree with what they are doing, but, in the end, someone has to take a decision. They decided to renew the hedges and we agreed with that. When we expressed concerns as a community organisation about what was happening and we were not quite sure, they spent two or three long sessions with us going through the plans and explaining them in detail; they were only too happy to do that. So we have found them cooperative. We disagreed with the outcome of some of the buildings on national land at Fairbairn disappearing, but we understand that the Heritage Commission did not put up any opposition to the buildings going. In the end, someone made a decision. We did not like it and we said so.

**Mr Griffiths**—I would like to mention one of our councillors who contributed to the submission that we made. He is a practising architect and better able to make this comment. Even though he is not here, I might pass it on, for what it is worth, to the committee. It concerns the residential planning responsibilities that the NCA has for a number of houses—perhaps that is what you are referring to. I have not connected with the NCA's processes as far as those 40 or 50 dwellings are concerned. I know that Mr Martin—who is, as I say, a practitioner and better equipped than me to comment—has said to me that the NCA is not really geared up to be a residential planning authority and that it would be better if responsibility for those particular houses and streets were transferred to the Territory authority and came under the ambit of their processes with development applications et cetera. They are very closely geared into seeking views from residents and the public at large through organisations like ourselves or resident groups about the particular development in hand. It would seem to me to make sense, to give a complete picture for the whole of residential Canberra, that those particular streets and houses be legally transferred, if that is the correct term, to the Territory authority for those planning processes and responsibilities.

**Prof. Taylor**—There is one more thing which I would like to say, rather than waiting until later. One thing that we would like to see is for the NCA—that is an unfortunate name because, when you talk about it at dinner parties, people think you are talking about the National Crime Authority—to be in a position to look more seriously at World Heritage status for Canberra. We know that this is not a priority with the government. In the international heritage arena it is a priority. There are people in Europe who are staggered that this country does not do something about World Heritage status for Canberra. That does not mean freezing the place or making it into a museum, but this is the most famous 20th century planned city in the world.

**Mr NEVILLE**—My understanding of World Heritage listing is that, if you want to make a substantial change to the listing, you have to go back to the original committee of the United Nations and get a two-thirds majority. I could understand the ACT and the federal government being very nervous about that.

**Prof. Taylor**—There is a World Heritage committee in Paris and they are the ones who administer the listing.

**Mr Griffiths**—I have had long experience in the Environment portfolio, with managing a number of World Heritage sites, and you do not have to go back to Paris or wherever the chairmanship resides every time you want to put up a building or knock down a building within the World Heritage area. That is just not the case.

**Mr NEVILLE**—But, if you want to delist all or part of it, you have to.

**Mr Griffiths**—If you want to change the boundaries of the place that is on the register, you would have to go back and that matter would be debated firstly in the World Heritage Committee, which sits every six months in Paris, and it would then go to a full session of the World Heritage Convention. There are normally 22 parties signatory at that convention meeting. That is only in terms of shifting the boundaries.

**Mr NEVILLE**—Yes. The other thing I would wonder about is whether, once you sign up to a World Heritage listing for Canberra, that then places on the Commonwealth, as the national parliament, certain obligations under international treaties. Perhaps we are straying a bit from the main point, but—

**Prof. Taylor**—That does not seem to bother governments in terms of natural heritage areas.

**Mr NEVILLE**—No.

**Mr CAUSLEY**—It does bother some members.

**Prof. Taylor**—But not others.

**Mr Griffiths**—It puts a whole variety of responsibilities on the Commonwealth, depending upon the particular arrangement.

**Senator LUNDY**—I would like to go back to a very early point you made about the resources to the National Capital Authority. Can you expand on that view? Are you able to make any observations about the level of resourcing to the organisation and how it relates to its performance, credibility and capability?

**Mr Griffiths**—I am not in a position to make an informed statement about that, because I just do not have that sort of information available. It really has not come within our area of responsibility. I suppose I would like to see a greater and better articulation of Canberra as the national capital and allowing more work to be done to identify its World Heritage significance. That picks up on Professor Taylor's comment. I do not know what the view of the NCA is regarding Canberra's World Heritage significance, but the view that I know Professor Taylor

holds and other people internationally hold is in my view a very persuasive one. It would be fitting, I think, for the NCA to try to do more to persuade the detractors of World Heritage listing within the federal government to see the benefits and the real need for Canberra to be on the World Heritage list. Canberra is, without doubt, of that significance when one compares it with the sorts of places in Europe that are on the list. Almost every chateau of the Loire is on the list. The list is still very Eurocentric in terms of cultural heritage, and in Australia we need to start putting some non-natural places on the register because for us the World Heritage List is very heavily skewed in terms of our natural places, which are significant in their own right, but we should not step back from identifying places of cultural significance.

**Prof. Taylor**—In saying that, we do not have the books or the details in front of us. I am just aware that the funds available for looking after the open spaces, which I keep coming back to, are limited. There is the view that the landscape looks after itself but I think that recent events show that it does not. There has been insufficient money spent on not just the urban areas but also the other areas that are part of national land. The landscape—green space—needs funding just as much as the hard spaces do, otherwise it gets out of hand and you get mounting problems. I do not think that this is understood. There is a tendency to think that, as with a large garden, if you let it go a bit it will look after itself—it does not. The relationship between the NCA and the ACT government in looking after the open space would be one of these matters that ought to be taken up by some joint group which could look in detail at the funding problems.

**Senator LUNDY**—Earlier today we heard evidence about the need for the NCA to better articulate what ‘national significance’ means for the purposes of the National Capital Plan. Do you think that is a fair point? Do you think it needs further clarity to try and stop some of the confusion at the community level and the more technical demarcation and disputes that arise in some designated areas?

**Prof. Taylor**—We think in terms of territory land, designated land and national land. You are not just talking about the national land, are you, just the triangle?

**Senator LUNDY**—No, I am talking particularly about national significance for Canberra, more generally. And I am interested in your view about how a tighter definition could help clarify how we manage designated land.

**Prof. Taylor**—It goes back to the answer to Mr Neville on disseminating information. I have talked about this with people whom I thought knew about it who said, ‘We didn’t realise that that was what ‘designated land’ meant.’ These are people you meet at the National Library. They say, ‘Why doesn’t someone write about that in the newspaper? That would make it a bit clearer.’ We can understand now why these decisions have been made. They flow from a set-up from the Hawke government—after local government and Gary Punch set up this organisation—to look after the national significance of this place. It is the sort of thing you have to keep publicising. You have to keep writing about it. We know about listing it on the World Heritage List and the whole idea of significance and the value that people put on places. You have to constantly reiterate it.

**Mr Griffiths**—I think that was borne out by the Gungahlin Drive case that Ken referred to. I think there is inherently an attractiveness to having one single planning authority for Canberra. I remember the days of the NCDC when there was one organisation. Even though you might not



have liked the way they did business it was a simple concept to understand—one organisation that you had to deal with. Now all of a sudden we have two organisations that seem to fight with each other in the newspapers. There seems to be confusion about which role which organisation has. I think that is not helped by the term ‘designated land’. Any greater transparency in the nature of the terms, or even a different set of terms, I am sure would help. Also the sort of information that Ken has spoken about would help to overcome people’s difficulties in understanding how it could come to a point where what is essentially a local road issue suddenly becomes an issue that involves the federal minister and the federal parliament.

**Senator LUNDY**—Using Gungahlin Drive as an example, are you aware of any other issues during the period of Canberra’s self-government—so I guess since 1989—when there has been such an intractable difference of view between the National Capital Authority and the ACT government of the day?

**Mr Griffiths**—I will take that on notice.

**Senator LUNDY**—Please do. I know there have been disputes, but I am certainly not aware of anything that has been quite so intractable or quite so controversial.

**Prof. Taylor**—No, I cannot think of one.

**Mr Griffiths**—But if we do, I will let the committee secretary know.

**Senator LUNDY**—Please do.

**Prof. Taylor**—I can think of one agreement that should not have taken place.

**Senator LUNDY**—And which one was that, in your view? Are you prepared to share your views with us?

**Prof. Taylor**—The National Museum.

**Senator LUNDY**—That is a lake foreshore issue. I am aware, for example, of the recent sale of Commonwealth land at the water police station site in Yarralumla Bay to private interests. As an informed observer of the operation of the National Capital Plan, how do you reconcile those kinds of decisions by the Commonwealth, albeit a different part of the Commonwealth, to effectively sell off land in designated areas and imply a flexibility about the role that that land will play in the future when at the same time the National Capital Authority is bound in concrete of their own making to issues such as the Gungahlin Drive extension route? Can you comment on what I observe to be quite a paradoxical situation? I am not saying that the NCA is responsible for the selling off of the land at the water police station site, but it will be responsible for any lease purpose changes or any subsequent commercial proposals for that particular site in the future, and I am sure that they will come.

**Mr Griffiths**—I do remember a case last year when Minister Corbell was upset over the sale of some land by a Commonwealth authority.

**Senator LUNDY**—It was in Tuggeranong, I think.

**Mr Griffiths**—In Tuggeranong or Woden.

**Ms ELLIS**—Yes, there was more than one package.

**Senator LUNDY**—But I am talking about the sale of Commonwealth land in a specifically designated area, an area right on the lake foreshore that clearly has a status beyond that of attractive suburban land—although there are several issues involved in that.

**Mr Griffiths**—I cannot comment, I am sorry.

**Prof. Taylor**—This is at Yarralumla Bay?

**Senator LUNDY**—Yes.

**Prof. Taylor**—I have to confess that I am not aware of that.

**Senator LUNDY**—Could you take that on notice?

**Prof. Taylor**—Yes.

**Senator LUNDY**—I would be very interested if you are able to offer some sort of comment or observation about that scenario. It is on the tip of the Yarralumla Bay peninsula.

**Prof. Taylor**—Yes, I know where you mean.

**Ms ELLIS**—I preface my question by saying that we have an interesting dilemma. On the one hand we have the National Capital Authority and Canberra as the national capital; on the other hand we have 320,000 people—the overwhelming majority of whom absolutely adore living here; in fact, in my opinion they all do—who are incredibly proud of the fact that they live in Canberra and therefore contribute to Canberra in its role as the national capital. We are all terribly parochial about that connection. Most people are very aware of it and keen on it. Given that the NCA is there to protect the national interest and role, do you have a view about whether it is necessary—and, if so, how we do it—for the NCA to have a greater responsibility to the 320,000 people who live in the territory and who take pride in their role in the national capital? Do you think it is necessary for the NCA to have any form of responsibility to them?

**Prof. Taylor**—Ideally they do, through the Commonwealth government. They are a Commonwealth government agency, so they have a responsibility in that way. But of course those 320,000 people are part of the 20 million people to whom this city belongs. We are fortunate enough to live in the most beautiful city in the world, in my view, and so we have this split personality and this split responsibility.

I think it comes down once again to publicising what the authorities are about. The NCA is not working in an ideal way against the people of the ACT; it has to see the ACT in the wider setting of its national role. What might be a holy cow to somebody locally is not necessarily a major issue nationally. I do not think that people understand the set-up well enough or why it is there. I keep coming back to this. I know the NCA is attempting to address this—we have a cultural adviser now, and things are coming in from that area.

**Senator LUNDY**—I was going to ask for your views on that.

**Prof. Taylor**—I will not go on with that then.

**Mr Griffiths**—I can understand what you are saying. When the Gungahlin Drive extension was going on, my friends said, ‘We didn’t elect Wilson Tuckey; what is he doing getting involved in this?’ That reflects again the point that Professor Taylor is making. I am in favour of all organisations being as open and accountable to their constituents as they can be. The point you make is a good one: we are part of the NCA’s constituency because we live here, irrespective of the fact that they are looking after a national icon. If there were some benefit in the NCA constructing some sort of outreach committee on which various communities, professional groups or suburbs could be represented—I do not think there is such a committee—that would not do any harm as it would attempt to feed back into the community the sorts of things that the NCA is trying to do and its *raison d’être*, really, because that basic threshold question of why we need an NCA still seems to be a stumbling block for so many people.

**Ms ELLIS**—I am not seeking to make the NCA responsible to the constituency here in the true legislative sense—

**Mr Griffiths**—No, it would be a community consultative committee.

**Ms ELLIS**—but there is an undeniable friction and interface, and I am looking for ways that it can be improved and acknowledged.

**Prof. Taylor**—To use an overused word, as citizens of the ACT we are stakeholders with a major interest. When Colin mentioned that, it occurred to me that, although one does not want to have too many committees, maybe Minister Corbell is continuing the planning and development forum because it is representative of all views in the community. We sit around the table, and I do not necessarily agree with Romilly Madew—sometimes I do and sometimes I do not—but it is a forum for the exchange of ideas that are then passed on to the minister. That will continue even with the new planning and land council.

**CHAIRMAN**—We are well out of time.

**Senator LUNDY**—Can I read a couple of questions into *Hansard* and ask the witnesses to take them on notice?

**CHAIRMAN**—Yes.

**Senator LUNDY**—I am interested in your view of the NCA’s approval of the futsal slab. I am also interested in your view of this year’s budget announcement on the NCA’s plans to get more involved in promoting the National Capital Authority. I presume you are quite pleased about that, and I would be interested in getting a response. Thank you.

**CHAIRMAN**—Professor Taylor and Mr Griffiths, on behalf of the committee I thank you for your attendance here today. If there are any matters on which we need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence, to which you may make editorial corrections. Again, thank you for your attendance.

[1.40 p.m.]

**COSTIGAN, Mr Paul, Executive Director, Australian Institute of Landscape Architects**

**HOBBS, Mr Neil, Associate Member, Australian Capital Territory Group, Australian Institute of Landscape Architects**

**CHAIRMAN**—Welcome. I apologise for the slight delay in calling you. These hearings are legal proceedings of the 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 has received a submission, numbered 18, from the Australian Institute of Landscape Architects. Are there any corrections or amendments you would like to make to your submission?

**Mr Costigan**—No. I would like to offer an apology for Mr Paul Bombardier, who had hoped to be here. But he had a death in the family yesterday.

**CHAIRMAN**—That will be noted, and the committee is very sorry and offers its condolences to Mr Bombardier. 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 you some questions, do you wish to make an opening statement?

**Mr Costigan**—Thank you for the opportunity to present and to make comment. As an opening gambit, I would suggest to you that the thing that frustrates most landscape architects dealing with both the NCA and the ACT government is a lack of vision. Having the privilege of hearing most of your questions to the previous people, I would say that the answer that most people are looking for is that most of those problems need to be addressed in seeking out a vision for Canberra. Canberra started with a vision: it was a Burley Griffin plan, even though other people have had their say along the way. But we need to go back to both the Commonwealth and the ACT government working very strongly together, being committed together and having a vision for this international treasure.

At the moment, I would suggest to you that, no matter what we said in that document, the thing that niggles away at everybody involved—anybody who has anything to do with the landscape—is that that landscape vision is being lost. We are getting caught up in technicalities, maintenance and decisions about particular parts of the territory, but we are not making those decisions with an overarching vision in mind. That is being degraded year by year. If we can address that first, we will see this very important treasure back on the international map.

I am the representative of the landscape architects, and, as you could imagine, they are also very concerned that a lot of the visionary work is not being done by landscape architects but by other professionals and other bureaucracies. I think I can speak for most people involved: we are not looking for more bureaucracies. We are looking for those that have already been paid for working together to more effectively deliver that overarching vision. If nothing else, if we can look to that happening, I think we will find that most other things will then start falling into

place—rather than getting lost in technicalities, in individual bits of the territory or in arguments such as ‘this is our bit, and this is your bit’. It should be ‘this is the whole thing, and this belongs to the people of Australia’.

We have been entrusted through the NCA and the ACT government to deliver—and to continue to deliver—on what has been handed to both of those governments. I do not feel from the landscape architects—both nationally and here in Canberra—that there is any argument about the Commonwealth having a role and, because we live in a democracy, the ACT people through their government having a role. How those function together is the key.

**Mr Hobbs**—I suppose I would like to reinforce some of Mr Costigan’s statements about the vision for the national areas and the designated land and all those areas—where the vision for the ongoing development and the strategies for the maintenance of the existing landscape settings can be taken. I make a plea that timely maintenance be undertaken and implemented.

**CHAIRMAN**—Thank you, Mr Hobbs.

**Mr CAUSLEY**—I note that you say here that you believe that a lot of the projects of the NCA have been delayed because of a lack of adequate financing. Could you elaborate a little bit on that?

**Mr Hobbs**—I have some knowledge of a few areas there. Firstly, I suppose I should say that Commonwealth Place and Reconciliation Place are two recent initiatives, and I noticed that tenders for the second stage of Commonwealth Place were advertised for in the papers last weekend. Aside from those, the bridge abutments either north or south of Commonwealth Avenue and Kings Avenue are examples. The southern landscaping was done three or four years ago, I suppose, and I think at the time the plan was that the other abutments would be done very quickly. That has not occurred. There may be some work happening. I have heard that the northern abutment of Commonwealth Avenue Bridge may be being done shortly but the Kings Avenue southern abutment is in a pretty parlous state—and quite unsafe, more than anything else, for pedestrians, joggers and so on. It is probably one of the busiest pedestrian areas in Canberra at lunchtimes. That is a key central national area project. Otherwise, there are some maintenance issues within the parliamentary triangle with respect to tree replacement issues and so on. We have a 70-year-old tree canopy in many of these areas that is not being replaced. The management and the strategies are not there to replace those trees as they start to decline.

**Mr CAUSLEY**—So you believe the budget for the NCA is not high enough?

**Mr Hobbs**—I suppose it is a matter of priorities, and I am not aware of the detail, but it seems that there are some projects which may have quite a lot of priority but which have not been advanced in a timely manner.

**Mr CAUSLEY**—But you would be aware that there are always other departments in other areas of Australia that would be competing for the taxpayer dollar?

**Mr Hobbs**—Certainly.

**Mr Costigan**—Superficially I would have to agree that I think the NCA is under-resourced. Again, I am not into their finances, but the evidence would be everything that Mr Hobbs has just said. But I think the bigger issue is the maintenance of the territory. What we are seeing is that the maintenance and conservation plans for the territory seem to be a secondary issue; yet we are dealing with landscape. I think it was Professor Taylor who said that that has to be part of the budgetary process as well. You are talking about the people of Australia and the money that is spent, and I think they would be ashamed if they knew that such a thing had been handed to these two governments but that a maintenance program was a not priority for the whole area. Look at the parliamentary triangle. We know that trees have a lifespan. When you plant a tree, you have to plan for its maintenance—how you are going to look after it and not letting it get out of shape—and you are going to have to plan for its replacement. It is going to happen. We can go right through parts of the territory, issue by issue, and the same thing is applying; we are not building that into the budget.

My outside view of the NCA is that I do not see them having that resource in their budgets. Also—and we will come back to this one later—there is the issue about the whole promotion of the territory. I see an example in, as someone mentioned before, the parliamentary rose gardens. To put it crudely: I think I saw them having chook raffles to help out. Where was the budget behind that? The planning for that was done in the mid-nineties and yet we are still staggering to get those heritage places back into a manageable state, back to where they should be. I am being crude, but I think they are looking for the equivalent of chook raffles to try and supply the money.

**CHAIRMAN**—Are you talking about the rose garden at Old Parliament House?

**Mr Costigan**—Yes.

**CHAIRMAN**—I understood there was a budget of \$4 million.

**Ms ELLIS**—They are selling the roses. You pay \$100 to get a rose.

**Mr CAUSLEY**—You would have to accept that other areas of Australia do not have that and have made huge investments in Canberra in the past.

**Mr Costigan**—I would accept the investment in the past—if you want to, we can go there now—but we are talking about the culture of Australia and who pays for it. The people of Australia have shown through many surveys over the years that they are interested in the cultural and heritage aspects of Australia being looked after. That is the short answer.

**Ms ELLIS**—Can you elaborate a little on the comment in your submission about neither authority employing a chief landscape architect? Has either of them ever done so? Can you give us a little history on what the practice was and what is now?

**Mr Costigan**—The NCDC had a landscape branch, which had a chief landscape architect and landscape architects who did the planning and made sure that things happened. I do not think we have ever seen that in the subsequent NCA. Within ACT government, we have got to the stage of employing landscape architects in other roles, but we have never seen a chief landscape architect

position. You could go around the world and see such positions but, with regard to Canberra and landscape, we are run by other professions.

**Ms ELLIS**—Within its bailiwick, to what degree does the NCA consult with your organisation in relation to its landscape needs, or does the NCA simply contract in a landscape architect? Does it have a relationship with you?

**Mr Costigan**—Yes.

**Ms ELLIS**—How does that work?

**Mr Hobbs**—At lots of levels. We are kept informed of some events by presentations by members of the NCA. Sometimes they have had higher or lower levels within the ACT Institute of Landscape Architects, so I suppose we get quite a close idea on what is going on from time to time. We get opportunities to attend submissions on various projects. At the last local meeting, there was a presentation by an employee of the NCA on some of the work it has been doing on the Griffin legacy and some of the earlier plans. Broadly, on a professional basis, we are kept up to speed. In terms of the way the projects are run and the construction projects that are put on the ground and so on, the NCA has a number of methods of procuring design services. Several times it has been through competitions—recently there were national competitions for Commonwealth Place and Reconciliation Place, and a little memorial at the bottom of Anzac Parade has gone through some stages—and the institute is well aware of those sorts of methods and procurement ideas.

**Ms ELLIS**—You said that further work is being done on Commonwealth Place?

**Mr Hobbs**—Tenders have been called for the next stage of the forecourt, between the edge of the grass and the lake edge. I am not aware of the timing.

**Ms ELLIS**—Will they ever plant trees in Commonwealth Place? It is insufferable in the summer—you cannot hold a function there because it is so hot. It has nothing to do with the inquiry, but I could not stand not saying something.

**Senator LUNDY**—We might have to wait for the NCA, to get that question answered.

**Mr NEVILLE**—Ms Ellis asked you about having a chief architect. What is your experience of the NCA's global understanding of Canberra and the landscaping of public areas and reserve areas? Does that vision translate into its influence in residential areas? What is your comment on that? Do you think that, from the point of view of landscape architecture, the vision filters right down, through reserve areas, public areas and public buildings, into the suburbs? What is your comment on that? How good is the NCA in that field?

**Mr Hobbs**—It is a bit of an anomaly that there is such a small amount of residential land that the NCA has this jurisdiction over. I suppose that it is not at their core or at the highest level of their 'to do' list. It is more that, historically, it has been left in that position. It is not something that I would see them actively spending a great deal of time on. In terms of the decisions on Melbourne Avenue and State Circle, for instance, it has not been their main game.

**Mr NEVILLE**—Not being a resident of Canberra myself, you might be able to answer this question. For residential properties and the small and medium-sized commercial buildings, is their landscape architecture a condition of approval?

**Mr Hobbs**—Yes. The NCA would certainly require it.

**Mr NEVILLE**—To what extent and with how much rigour is that imposed and disciplined?

**Mr Hobbs**—Professionally, we have had some personal experience. What we have provided has been what would be required by the ACT government; a similar sort of standard of landscaping. I cannot really comment on the site planning issues but certainly in terms of the landscape.

**Mr NEVILLE**—Does that blend in with a holistic vision of Canberra landscape architecture as Mr Costigan was articulating earlier, or is it just in isolation—property for property?

**Mr Hobbs**—It is in the residential areas, for instance, because they are contiguous—they are on a couple of streets. I suppose the landscape requirements would have some sort of contiguousness. We are talking about small residential areas.

**Mr NEVILLE**—Some of the older suburbs of Brisbane have themes through them like Jacarandas through whole suburbs and things like that. Are themes like that adopted? I know that in some of the old suburbs like Griffith you see that but is that a condition of current NCA planning?

**Mr Hobbs**—Canberra Urban Parks and Places is looking at the street tree planting—street tree replacements, for instance—in State Circle.

**Mr NEVILLE**—Is it holistic, or do the parks and gardens do one thing, the people in the residential properties do another thing, the people with small and medium commercial buildings do another thing and then, when we get out onto the hills and the freeways, we have another thing going? Is there a holistic NCA driven vision of landscape architecture for the ACT and, particularly, for Canberra?

**Mr Costigan**—I suggest to you that there is not a holistic vision. The NCA is part of that answer and nor is it coming from the ACT government alone. I will go back to what I thought was your original question. I think that we are missing that influence. If we have both agencies working together when a residential property decision is being made, we want that decision to be made in the context of the vision for the whole of the ACT. We have a debate with the ACT government now—and I will get Mr Hobbs to answer more on this—on the technicalities about the trees that are being planted right now in certain areas of Canberra away from the nationally significant areas. You are looking at almost a rewriting of the aesthetics of this city by default through decisions that are being made at a very local level.

**Mr NEVILLE**—In some of the new suburbs, I do not get the feeling that there was a plan. I do get that feeling in some of the older suburbs—trees now meet above, the canopies meet and things like that.



**Mr Costigan**—Yes. Are you saying that it is missing in the newer suburbs?

**Mr NEVILLE**—Yes.

**Mr Costigan**—I would certainly agree with you.

**Mr NEVILLE**—Would you agree that part of the general amenity of Canberra is not just the geographic planning and the built environment planning, but the landscape architecture which is, if you like, the third leg of that stool? I do not sense that it happens. It may happen around some prestige buildings but even around the new Foreign Affairs building it is pretty ordinary. For the centre of our Foreign Affairs where all the leading diplomats of the world and their staff come, I do not get the sense that the grandeur of that building is in any way matched with the landscape architecture that should go with it. Is not the landscape architecture, or the landscape of Canberra in particular, part of its attraction?

**Mr Costigan**—Yes. In fact, you would have to question why we are not making decisions about Canberra with landscape architecture as the prime agency as opposed to architecture.

**Mr NEVILLE**—We have to recommend to the government what the NCA should be doing about these things. What do you think they should be doing?

**Mr Costigan**—I would agree with almost everything you have just said. We are looking at the holistic approach to the landscape of Canberra and the NCA's prime role should be to have that vision in place.

**Mr NEVILLE**—And that should filter down to urban and even to individual suggestions for property?

**Mr Costigan**—Yes. I think there is an influence for the Commonwealth through everything you are talking about. What we are not saying is the structure in which the ACT government, the NCA and the Commonwealth have to work together. We are not getting into the nitty-gritty of that. We are saying that they have to do it; they have to deliver on everything you have just talked about and are concerned about. It is a prime role for the NCA.

**Mr NEVILLE**—Would you like to come back to us with a few suggestions in that field?

**Mr Costigan**—It would take some work, but yes.

**Mr NEVILLE**—Could you come back to us with some dot points as a supplementary submission?

**Mr Costigan**—Yes.

**Senator LUNDY**—I am very interested in the issues of replacement of trees and the abatements of existing landscape architecture. My first question concerns the national approaches to the national capital and, in particular, I note with interest outside my own suburb that there are some very big gum trees coming down, because I presume they are too old. To

your knowledge, is that something that would be funded and managed by the NCA, given that it is designated land on a national approach?

**Mr Hobbs**—I believe that it should be. Northbourne Avenue, for instance, is the key approach to Canberra.

**Senator LUNDY**—Yes, it is on Northbourne Avenue.

**Mr Hobbs**—Given that, I think that it should be. That approach has had several iterations while I have been coming to Canberra and living in Canberra. Years ago, it was dryland grass and relatively old, established trees that had been there for some time. About 15 to 18 years ago, the current trees began to be planted in a staged process and then about 10 years ago the existing trees were gradually removed once the new trees' canopies had developed. There has been no replanting since then.

**Senator LUNDY**—Are you talking about the centre? The trees that I am referring to are on the approach from the north to your left on the part of Northbourne Avenue that does not have any trees on the centre divide. It is further north. It is north of Antill Street.

**Mr Hobbs**—Yes, I know that they have been taking down a lot of the blue gums that were probably planted there originally 40 years ago.

**Senator LUNDY**—I do not want to go into the merits or otherwise of that exercise, but would that be funded by the NCA?

**Mr Hobbs**—It is the national approach, if it is still Northbourne Avenue, so I would have thought that it should be within the approaches from the border through.

**Senator LUNDY**—Yes that is my understanding.

**Mr Costigan**—The whole of Northbourne Avenue on the ACT government papers is missing 111 trees.

**Senator LUNDY**—When you say missing, does that mean they should be replaced to be consistent with the landscape architecture that was adopted and accepted?

**Mr Costigan**—There is a whole plan in place; it is lost to the ACT government at the moment. I have been looking for a letter I thought I had with me. We have written a letter to the ACT government about replacement of tree issues. It does not say, 'Do not do things to trees.' It says, 'You need to be doing things to trees.'

**Senator LUNDY**—Why is your letter to the ACT government and not the NCA?

**Mr Costigan**—It is about the whole thing.

**Mr Hobbs**—It was about the streets all around that area.

**Mr Costigan**—Northbourne Avenue just being one street.

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**Senator LUNDY**—Right.

**Mr Costigan**—But maybe your point is taken.

**Senator LUNDY**—My next question goes to the issue of landscape tree replacement along the sides of streets. Does the NCA have any role in requiring the replacement of landscape trees along suburban streets as opposed to national approaches?

**Mr Costigan**—I think my answer goes back to what I said to Mr Neville. I think there is a role for the NCA to be influencing the overall decision making. It is the aesthetic. There is a program in place and the program is going to deliver something pretty horrible, I think, if it is allowed to go on for years and years. We are seeing the rewriting of the aesthetics of Canberra and when you consider urban places where people live it is a pretty big part of Canberra that is slowly being rewritten.

**Mr Hobbs**—What has developed is that the list of trees species that can be approved for replanting now has been whittled down dramatically because of a whole range of competing interests, for example, the road carriageway configuration, the tightening of the verges and the requirement for all the various services to be within the road verge. Many streets in Canberra have got narrow verges and quite large trees—some areas in Griffith, and so on. I suppose the view now is that the assets, the services and the curbs and footpaths, are higher in the hierarchy than is a tree so it is considered that the maintenance of the curbs and services is more important—

**Senator LUNDY**—So do not plant a tree if it is going to crack the path.

**Mr Hobbs**—No.

**Mr Costigan**—To put it very briefly, if you ask the ACT government—and I think the NCA has a prime interest in what is happening—for their plans for the trees, there are 70 trees to choose from. In reality, by the time they get down to it—and I will take advice—it is three.

**Senator LUNDY**—Three trees? Which ones?

**Mr Hobbs**—I think they are just about all pear varieties. It is a relatively narrow choice.

**Mr Costigan**—By the time all the competing interests come in and say, ‘We cannot do that because of this, or we cannot do this because of that—

**Senator LUNDY**—I think I hear what you are saying.

**Mr Costigan**—My answer therefore relates to your original question. Surely, the Commonwealth has an interest in what is happening.

**Senator LUNDY**—The planting and maintenance of trees around the Lake Burley Griffin foreshore, for example, the replacement of the ageing poplars in some areas around the foreshore: what role do you have in the decision making of that? What role did you have in what

I thought was a revelatory experience—that is, having some of the willows removed from the foreshores of Lake Burley Griffin?

**Mr Hobbs**—The institute has not been involved in any direct way.

**Senator LUNDY**—That was very good. With regard to ensuring and maintaining the character of the capital by virtue of the types of trees that are planted on the lake foreshore: is that something that the institute gets involved in?

**Mr Costigan**—We are becoming far more proactive in responding as much as possible to those issues.

**Senator LUNDY**—My final question concerns the maintenance of Parliament House and precinct and the extensive and fine landscaping around this area. Are you able to make any observations about the standard of maintenance in this precinct? Is the institute satisfied with it? Have there been issues? How does that relate to the resourcing of the NCA?

**Mr Costigan**—I will leave that to Mr Hobbs. If you do not get a satisfactory answer—and I think Mr Bombardier would also have liked to have commented on that—

**Senator LUNDY**—I am happy for you to take it on notice, subject to Mr Hobbs's comments.

**Mr Hobbs**—I walk around it reasonably regularly. I walk around the exterior gardens and so on—

**Senator LUNDY**—That is mainly what I am talking about.

**Mr Hobbs**—That is maintained to a much higher level than many other areas in Canberra, and I suppose I would like that level—

**Senator LUNDY**—Relative to that, it is not too bad.

**Mr Hobbs**—It is a very pleasant walk. But obviously it is all a matter of replacement plantings again being just as important. A lot of the shrub species, for instance, are now 12- to 15-years-old and the character of the landscape is changing and, as with anything else, as Professor Taylor said earlier, you plant a plant or you put down some grass and it costs money to maintain. Whatever gets done has to have a commitment to maintain it through its life, otherwise it will degrade.

**Senator LUNDY**—I am happy for you to take it on notice if you have other members of the institute who may like to comment.

**Ms ELLIS**—On the comment that you were just making in relation to Senator Lundy's question: you said there were three trees left—basically because of all of the so-called conflicting interests. Is it the view of the institute that those views of conflict are legitimate? Are all of the reasons or excuses being put forward for the decrease in the ability to plant a variety of trees legitimate?

**Mr Costigan**—If you were to look at each one in isolation, you would probably end up coming to that conclusion. But I do not think we are dealing with issues that have to be taken in isolation. I will give you a generalised answer—

**Ms ELLIS**—Yes, absolutely.

**Mr Costigan**—I think—and let me repeat myself—we are looking for a vision of what we want the suburbs to be in the context of the national capital.

**Ms ELLIS**—Yes.

**Mr Costigan**—So yes, they are conflicting and yes, they may seem quite justifiable in isolation—but we are looking at a designed landscape. We are trying to maintain it and make it have a future which is not just based on a small solution about whether that footpath is going to crack or not. It is a very short answer.

**Ms ELLIS**—I am reading into your answer—and correct me if I am wrong—that there are far better ways to take those things into consideration than are currently being done.

**Mr Costigan**—It is a design solution we are looking for.

**CHAIRMAN**—Mr Costigan and Mr Hobbs, thank you on behalf of the committee for your attendance here today.

[2.12 p.m.]

**O’SULLIVAN, Mr Lawrence Gregory, OAM (Private capacity)**

**CHAIRMAN**—On behalf of the committee, welcome to this inquiry today. It is most pleasant to have you with us again.

**Mr O’Sullivan**—Thank you.

**CHAIRMAN**—Could you please state for the record the capacity in which you appear before us today.

**Mr O’Sullivan**—I am here regarding properties subject to the very topic that is before the committee; No. 17 State Circle has been in my family for something like 15 years. I personally, and my wife, are the owners of that property at the moment.

**CHAIRMAN**—The committee has not received a submission from you. Do you now wish to lodge a submission?

**Mr O’Sullivan**—No, I would rather make some comments. Sir Lenox and I discussed what would be happening today and I was aware of the submissions he would be making. There are some things which are not proper for him to have gone into—

**CHAIRMAN**—Before we get to that, I remind you that these proceedings 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. 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 evidence be taken in camera and the committee will consider your particular request. Before we ask you some questions, do you want to make an opening statement?

**Mr O’Sullivan**—Yes.

**CHAIRMAN**—Please proceed.

**Mr O’Sullivan**—Firstly, I should say that my wife cannot be here. A short while ago she had a ventricular standstill—that is, her heart stopped—and it was just like my years as a teenager in New Guinea. I managed to start her immediately, the phone was alongside me and the ambulance was there. Yesterday they were still dealing with her pacemaker. She wanted to come, but I left her in bed with some toast and tea. She is interested in the matter and supports my views. She was present on the last occasion.

**CHAIRMAN**—She is obviously very lucky to have you.

**Ms ELLIS**—Give her our regards.

**Mr O'Sullivan**—I will do that. Secondly, it is of some importance to follow up what was in your earlier report, *Striking the Right Balance*. In that, I summarised the position about State Circle insofar as our family is concerned.

**CHAIRMAN**—I recall your evidence.

**Mr O'Sullivan**—I was late this morning because, believe it or not, our mortgage arose in discussions on the phone with Brisbane. First Mortgage was the subject body and they have now joined with Bendigo Bank. They kept me for half an hour renegotiating the mortgage arrangements. So we still have that property. It is still a lost property and I thought you should know that today because there were certain remarks made in public by the Chief Minister for the ACT and in your own reports about the proper use of the properties facing the back of Parliament House. Our property has several dogs, one man and one woman in a house with six bedrooms, several toilets and so on. Because of the traffic we cannot get an ordinary tenant. The people in it, I understand, run an occupational health unit. In fact, some politicians are their clients. But it is a business premise—not a high-quality residential one, to which there is reference in some NCA and other papers. That is not so. The reality is of course that we cannot get rents appropriate to the investments we have made in it. That is why the mortgage is so great.

Thirdly, it is important for us to appear for this reason: as I understand it, the minister, Mr Wilson Tuckey, is not in favour of a change to the law regarding the responsibility for notification and for the rights of tenants to have appeals regarding development proposals approved for adjoining tenancies. That of course applies to No. 15 State Circle, which was, as you heard Sir Lenox say, dramatically cleared because approval had been given unknown to us—house No. 17. Dramatically the block was cleared before we could do anything. There is in fact material on this. I did not want to go into a great deal of detail because it has already been gone into, but it says in your earlier report:

Once the error was detected—

this is what NCA claim was an error that they did not detect at first—

two of the three neighbours were in fact consulted and the proponent advised that he had tried to contact the third but had been unsuccessful at that time.

They did not have to do more than that because there is no statutory responsibility by NCA applying to any developer. As you heard Sir Lenox say, there was no right that we had to do anything at that stage. But that statement is quite an untrue summary of the facts. I had done everything from the first stage I heard of the tractors going in to start doing things. Straightaway I was on to the people concerned inside the NCA and, at the suggestion of one person there, with the people who were reportedly, in this case the architect, concerned with transforming the block. It is my conviction, based upon some things I have undertaken not to make public, that there was some intent to make a surprise attack before anything could be done. There was a Commonwealth act that I could have used—I was one of the first people to use it. I could have gone directly to the maker of the Commonwealth decision. But because one did not know about the approval for a development I left it until I got a reply. And there was no reply coming. If you look at the dates that are in your report you will see that time elapsed. It was not just a matter of as soon as the error was detected action was taken. In fact, they delayed right through. The effect

was that it was an empty block—we had already invested more money—and that means the best tenants we can get are the ones we have just told you about. They are not high-class, desirable residential properties along there. It depends upon whether the owner is a resident or not, and our property, as I have told you, is really a business.

Back to square one, I think it is essential that there be statutory provisions regarding development approvals by NCA for the people in the adjoining area. I still think it is ridiculous that this one group of properties is covered by the original act. The original act was designed to allow the widest possible proper development of the whole of the national plan. I was associated with Sir John Overall even before the NCDC was started, because I was running management training for the Public Service Board for second division officers. He was one of our first speakers and I was told, ‘He has been selected to set up a national body to plan with the ACT.’ He had had a distinguished service career. Mind you, Air Vice Marshal Evans has had one too. But Sir John had a background which was appropriate to a national capital. I do not know whether that applies to Air Vice Marshal Evans. In any event, neither Air Vice Marshal Evans nor his chief executive officer have been in touch with my wife or me in any way apropos what was written in your report and what you were told by officers of the department concerning the delay and the development of the block next door to ours. Neither the chief executive officer nor the head of the NCA spoke to us.

I heard remarks this morning regarding what the NCA does. The NCA is a statutory body, but it is not a group of people who are coordinated in the way that an army unit is coordinated. There are individuals in it who consider themselves in charge of this or that. If you do not mind me saying, Mr Neville, that applies to some of the remarks you were addressing this morning. In fact, who in NCA did what is important because, as I think I said on the last occasion, not only did I know Sir John Overall right from the beginning before he was actually at NCDC but I stayed in touch on and off over the years. He was very pleasant. We went for walks in the same area. Not long before he died, I raised with him the fact that they were still insisting on purely residential tenancies in State Circle. He knew about my interest and he asked me for some material. I gave it to him, but I would not push him about it. I did not get him to elaborate, but he was surprised.

Let me make the point that, in your report, you summarised the various stages of the draft amendments regarding this area. You tabulated them very accurately—and they are very easy to read—inside your report. The drama there is the fact that the person communicating with me before the April 2000 version was a Mr John Bolton. By the way, Sir Lenox was also in touch with him. He and I had had negotiations about eight years before that. That is 10 years from now. The whole point was that he knew that I—along with a number of members of the organisation—had tried to get them to get a professional traffic survey of what was happening in State Circle because, especially after Parliament House started on the Hill, it changed. It was no longer the backwater it had been before. All of that was known. No-one ever did anything about it, such as a professional assessment. I invite you to go down and have a look. You can just drive past and you will see what I mean, especially at peak hour. That is why we have got several dogs and two humans—grown persons—in our house. No-one with children would have them there. But that change occurred between the June 2001 version and version 3, 2002.

I think I have made my point generally. As I said, it may be a bit much to actually say step by step who did what all that time ago. I have said to you with some frankness that the explanations



given to you when your last report was done were, to my mind, superficial. That could be for a simple reason. I gave you a copy of the case concerned on the last occasion—I have not got it back, but that does not matter; you can keep it. In that case, Mr Justice Fox made it clear that it was intended that the NCDC, and subsequently the NCA, would have especially wide powers at law. He conceded that other places may have statutory limitations on their powers which gave rights to adjoining residential tenants et cetera, but in fact he thought it proper to stay with the special powers. But even he conceded that it was exceptional. I do not believe there is any reason given in any of the material to give an unfettered power to the present people at the NCA. And do not forget what I said: it depends on who in the NCA you talk to—for example, John Bolton. Some of them are ready to talk and concede that they have followed a logical pattern; others will take advantage because of what they see as their own personal small domain.

I do not know who is at the back of this one, but I thought I would mention this to you—and you can say ‘no’ to me—as a final point: I have in front of me a letter addressed to Mr Lawrence G. O’Sullivan OAM from the Taxation Department. I was before a court a short while ago. The reason was that there was a tax form that was wrong; someone had misplaced something. I have told you what happened with the NCA. What happened with the tax department was that I sent a letter to Michael Carmody. When I spoke with Michael Carmody face to face at the end of it all, I shook his hand and said, ‘Thank you, that’s the way to run a department.’

**CHAIRMAN**—You were talking to the commissioner?

**Mr O’Sullivan**—I was talking personally to the commissioner. To most of you, he would be like God and I bet you do not meet him, but he and I spoke face to face about it. I will pass this letter around or give you a copy—I do not want to lose it. You will see from this letter how a traditional department, fully and properly organised and administered in a management fashion—because I believe management is at fault in this case—responds.

**CHAIRMAN**—Do you wish to table that letter, Mr O’Sullivan?

**Mr O’Sullivan**—Yes, I will table the letter.

**CHAIRMAN**—We will copy the letter and give the original back to you.

**Mr O’Sullivan**—That solves my problem. Do you have any questions of me?

**CHAIRMAN**—Yes, I was just getting to that, Mr O’Sullivan. Senator Lundy has some questions.

**Senator LUNDY**—We are certainly familiar with your circumstances, given your involvement in the committee’s previous inquiry into DA 39, but I note your comments in your opening statement about the fact that you have never had any follow-up from the NCA in the light of that report having come down and, indeed, now in the light of the government having responded. As someone with a very clear interest in the properties on State Circle, where does that leave you now? What are your options for continuing your campaign for what you see as justice in your circumstances?

**Mr O’Sullivan**—I have a simple answer. On the last occasion you also saw Mr Drummond, who put certain proposals regarding developments there. We have a going arrangement with him, and there is an agent here who operates between us. At the moment, though, we have no contract, except one for an option for him—and there were some problems with that this week. However, the option is terminating at a certain date—which I will not tell you, but it is very close—and I do not know what will happen after that. It is my firm statement to a number of people—and the very question you have asked—that I expect that, if he goes ahead, he will get a price that I think is a good price at the moment. It will be the lowest one in that section, because our block is smaller. But, if your committee does something or if the minister does something which invalidates the plans that he has made, he does not have a contract to buy our block. He has an option for a contract, and that is all. He may decide to go in another direction at that stage. I have been asked the question by several quite important people recently, including a chief justice, and my answer is simply that, when your committee decides and the gloves are finally down and it is clear what is going to happen regarding these blocks for, say, the next 10 years, someone will then consider making another proposal to Mr Drummond’s and we will go ahead from there. Until then, we are not wealthy people. Sir Lenox is in a neutral position now, and I have worked with him since 1957 on and off.

We are a couple, and we rely on that extra money, but it is only balancing money at the moment. To be frank, I also have a service pension, but I do not have any superannuation, having left the Public Service and practised at the bar. I do not have a fortune like all the other lawyers you hear about, so in fact I need the money—it was to be my superannuation. I could not have believed it has dragged on the way it has. It will keep on like that whilst there is this business of a speculative element saying it should be for residential areas when it is clear to the passer-by that it is not suitable for that.

**CHAIRMAN**—Mr O’Sullivan, thank you very much for your attendance today. Before closing, I once again thank the witnesses for their attendance. I thank *Hansard* and the secretariat for their redoubtable contribution to the success of these meetings. Thank you one and all.

Resolved (on motion by **Mr Neville**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 2.31 p.m.**