

STANDING COMMITTEE ON PLANNING, PUBLIC
WORKS AND TERRITORY AND MUNICIPAL SERVICES
Draft variation to the Territory Plan No. 307 – Change of zoning

FEBRUARY 2012

Report 12

Committee membership

Ms Mary Porter AM MLA	Chair
Ms Caroline Le Couteur MLA	Deputy Chair
Mr Alistair Coe MLA	Member

Secretariat

Mr Trevor Rowe	Senior Adviser
Ms Lydia Chung	Administrative Assistant

Contact Information

Telephone	02 6205 0021
Facsimile	02 6205 0432
Post	GPO Box 1020, CANBERRA ACT 2601
Email	committees@parliament.act.gov.au
Website	www.parliament.act.gov.au

Committee's resolution of appointment

On 9 December 2008, the Legislative Assembly for the Australian Capital Territory (the Assembly) agreed by resolution to establish general purpose standing committees to inquire into and report on matters referred to it by the Assembly or considered by the committee to be of concern to the community, including:

- (e) a Standing Committee on Planning, Public Works and Territory and Municipal Services to examine matters related to planning, land management, proposed capital works projects in the public sector, including works undertaken by territory owned corporations, municipal transport services, heritage and sport and recreation.

The Assembly agreed that each standing committee can consider and make use of the evidence and records of the relevant standing committee appointed during the previous Assembly.¹

The Assembly also agreed:

- 6 (3) If the Assembly is not sitting when the Standing Committee on Planning has completed consideration of a report on draft plan variations referred pursuant to section 73 of the *Planning and Development Act 2007* or draft plans of management referred pursuant to section 326 of the *Planning and Development Act 2007* the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.²

Terms of reference

The *Planning and Development Act 2007* provides for the Minister to refer draft variations to the Territory Plan to the Standing Committee on Planning, Public Works and Territory and Municipal Services (the Committee) for the Committee to inquire and report its findings and recommendations to the Assembly.

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 9 December 2008, pp14–18, <http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>

² Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 9 December 2008, pp14–18, accessible at <http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>

Section 73 (2) of the Act states:

The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate Committee of the Legislative Assembly together with a request that the Committee report on the draft plan variation to the Legislative Assembly.

The Minister for the Environment and Sustainable Development wrote to the Committee on 23 August 2011 asking that the Committee report on Draft variation to the Territory Plan 307: Griffith, Section 42, Block 15 – Change of zoning from commercial CZ6 leisure and accommodation zone to RZ4 medium density residential zone and consequential amendments to Part C(5) multi unit housing development code.³

³ Corbell, S., Letter to Ms Mary Porter, Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, *Referral of draft variation to the Territory Plan 307 9DV307*), Griffith, Section 42, Block 15 – change of zoning from the commercial CZ6 leisure and accommodate [sic] zone to RZ4 medium density residential zone and consequential amendments to Part C (5) multi unit housing development code, 23 August 2011.

Acronyms and abbreviations

ACAT	ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
The Act	<i>ACT Planning and Development Act 2007</i>
ACTPLA	Australian Capital Territory Planning and Land Authority
Bowling Club	South Canberra Bowling Club (established 1948). Succeeded by the CSB&RC
Brumbies	Australian Capital Territory and Southern New South Wales Rugby Union Ltd more commonly known as the Brumbies Rugby Club
CSB&RC	Canberra South Bowling and Recreation Club Ltd.
The Committee	Legislative Assembly Standing Committee on Planning, Public Works and Territory and Municipal Services
CZ6	Land zoned CZ6 is for leisure and accommodation uses
DV307	Draft variation to the Territory Plan No. 307 – Change of zoning
GNCA	Griffith/Narrabundah Community Association
ISCCC	Inner South Canberra Community Council
The Minister	The Minister for the Environment and Sustainable Development
RZ4	Land zoned RZ4 is for medium density residential buildings
Territory Plan	Key statutory planning document for the Australian Capital Territory.
Zone	A zone is a land use classification term used in the Territory Plan. See also: CZ6 and RZ4

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RECOMMENDATIONS

RECOMMENDATION 1

The Committee recommends that Section 42, Block 15 be rezoned from CZ6 leisure and accommodation to RZ4 medium density residential zone on condition that it includes a precinct code that ensures each of the following:

- (a) no building or other part of any development be closer than 35 meters to the existing stormwater easement, thereby ensuring a band of the public realm, comprising both public open space and private land, continues from Murray Crescent to La Perouse Street, Griffith;
- (b) a new bicycle path be constructed in this area of public realm to make the area more accessible to the general public and provide an alternative transport route to Manuka and beyond to Telopea Park;
- (c) the well worn track which starts in Austin Street near Wells Gardens and proceeds towards Manuka be landscaped and improved to make the area more accessible to the general public. This should include a cycle path or wider paved area for the enjoyment of cyclists and pedestrians and some seating that allows people to sit and enjoy the surrounding area;
- (d) appropriate up to date flood warning signs be placed along pathways and access points to Section 42 Griffith;
- (e) any development or associated construction works not encroach on land lying under existing stands of trees on the perimeter of Block 15 and so by definition their respective root systems. At a minimum all perimeter trees are to be retained and all regulated trees are to be retained.
- (f) any residential apartment development not have more than one level of basement car-parking.
- (g) any residential development adhere to the current principle of 'universal design'.

RECOMMENDATION 2

The Committee recommends that any redevelopment of Section 42, Block 15 Griffith be conditional on comprehensive flood studies being undertaken and made publicly available; the studies to model not only impacts on Section 42 but also flooding impacts on surrounding areas and those towards Canberra Avenue pre and post development, recognising that any use of infill on Block 15 may impact on flooding in nearby areas.

RECOMMENDATION 3

The Committee recommends that should, Section 42, Block 15, Griffith not be rezoned, any redevelopment, such as the hotel already proposed, comply with the conditions (a) to (g) in Recommendation 1.

RECOMMENDATION 4

The Committee recommends that Australian Capital Territory Planning and Land Authority (ACTPLA) takes urgent steps to ensure there is better public notification and transparency for all land deconcessionalisation processes.

RECOMMENDATION 5

The Committee recommends that Australian Capital Territory Planning and Land Authority (ACTPLA) widely publishes its policy on deconcessionalisation to ensure understanding and comprehension of deconcessionalisation in the community. This should include a range of communication channels, including the Internet.

RECOMMENDATION 6

The Committee recommends that Australian Capital Territory Planning and Land Authority (ACTPLA) publishes a Factsheet on deconcessionalisation on its website.

1 INTRODUCTION

Planning in the Australian Capital Territory

- 1.1 Planning in the Australian Capital Territory (ACT) is governed by the law and policy of both the Commonwealth of Australia and the ACT.
- 1.2 The *Australian Capital Territory (Planning and Land Management) Act 1988* (Commonwealth)⁴ establishes the National Capital Authority, which prepares and administers the National Capital Plan. The Act also enables the Assembly to make laws to establish a statutory planning authority – now the ACT Planning and Land Authority (ACTPLA) – and for that authority to prepare and administer a Territory Plan.⁵
- 1.3 The object of the Territory Plan is to ensure that, in a manner not inconsistent with the National Capital Plan, the planning and development of the ACT provides the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.⁶
- 1.4 The ACT *Planning and Development Act 2007* (the Act) requires the Territory Plan to set out the planning principles and policies for achieving its objective in a way that gives effect to principles of sustainability, including policies that contribute to achieving a healthy environment in the ACT.⁷
- 1.5 The Territory Plan includes:
 - statement of strategic directions;
 - a map;
 - objectives and development tables applying to each zone; as well as
 - a series of general, development and precinct codes; and

⁴ Accessible via: <<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/FF4122C876FCA3D5CA2572D700834EF2>>

⁵ *Australian Capital Territory (Planning and Land Management) Act 1988* (Commonwealth), Section 25.

⁶ *Planning and Development Act 2007*, Section 48.

⁷ *Planning and Development Act 2007*, Section 49.

- structural plans and concept plans for the development of future urban areas.
- 1.6 The Territory Plan Map graphically represents the applicable land use zones under the following categories:
- Residential;
 - Commercial
 - Industrial
 - Community Facility
 - Urban Parks and Recreation
 - Transport and Services; and
 - Non-urban.
- 1.7 Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan. Variations are prepared by ACTPLA and issued for comment by the community and other stakeholders. This consultation can result in several versions of a Draft Variation.
- 1.8 Under the Act, the Minister for the Environment and Sustainable Development has the discretion to refer a draft variation, within 20 working days of receiving it, to an appropriate committee of the Legislative Assembly for inquiry and reporting of its findings and recommendations to the Assembly. Currently the Standing Committee on Planning, Public Works and Territory and Municipal Services (the Committee) is the appropriate committee.⁸
- 1.9 The Minister can only take action in relation to the Draft variation to the Territory Plan when the Committee has reported to the Assembly. The Committee is allowed up to 6 months to inquire into the draft variation and present a report on its findings to the Assembly.⁹
- 1.10 The Minister must take the Committee's findings into account before making

⁸ *Planning and Development Act 2007*, section 73.

⁹ *Planning and Development Act 2007*, section 75.

his decision in relation to the draft variation.¹⁰ If the Minister decides to approve the draft variation, he will table the proposed variation and associated documents in the Assembly.¹¹ The Assembly may wholly or partially disallow the proposed variation on a motion, which requires notice of 5 sitting days. If the Assembly does not vote to disallow the proposed variation, it will commence on the date nominated by the Minister in his tabled proposed variation.¹²

- 1.11 If the Minister does not refer a draft plan variation to an appropriate committee of the Legislative Assembly, the Committee is not prevented from considering the draft plan variation documents.¹³

Report Structure

- 1.12 The Report has four chapters plus seven appendices with information relevant to the Committee's Inquiry.

Chapter 1	Introduction
Chapter 2	The Planning Variation
Chapter 3	Issues
Chapter 4	Conclusions and Recommendations
Appendices	

¹⁰ *Planning and Development Act 2007*, sub-section 76(4) a.

¹¹ *Planning and Development Act 2007*, section 79.

¹² *Planning and Development Act 2007*, section 83.

¹³ *Planning and Development Act 2007*, section 73(3).

Conduct of the Inquiry

- 1.14 On 23 August 2011, the Minister for the Environment and Sustainable Development wrote to the Chair of the Committee, requesting that the Committee consider the Draft variation to the Territory Plan No. 307 and report on the Draft variation to the Assembly within six months or sooner if that were possible.¹⁴
- 1.15 The Committee advertised its Inquiry in *The Chronicle* on 13 September 2011 and in *The Canberra Times* on 14 September 2011. The Committee also wrote to a range of organisations, inviting them to make submissions.¹⁵ The closing date for submissions was 26 October 2011 by which time the Committee had received 85 submissions. However, some 20% of these did not comply with Assembly guidelines for making submissions to parliamentary committees in so far as authors did not provide details of their postal address and contact telephone number.¹⁶ This required the Committee to contact authors to ascertain their bona fides before publishing the submissions.¹⁷ An additional ten submissions were received during the course of the Inquiry along with other material, namely photographs and DVDs showing flooding on the site.¹⁸ The Brumbies did not prepare a submission to the Inquiry but requested that the Committee accept its Planning Report to ACTPLA as its submission. The Committee agreed to this.
- 1.16 The Committee held four public hearings on:
- Friday, 28 October 2011;
 - Friday, 4 November 2011;
 - Friday, 25 November 2011; and

¹⁴ Corbell, S., Letter to Ms Mary Porter, Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, *Referral of draft variation to the Territory Plan 307 9DV307*, Griffith, Section 42, Block 15 – change of zoning from the commercial CZ6 leisure and accommodate [sic] zone to RZ4 medium density residential zone and consequential amendments to Part C (5) multi unit housing development code, 23 August 2011.

¹⁵ See Appendix C – List of organisations invited to make submissions to the Inquiry.

¹⁶ Australian Capital Territory. Legislative Assembly. Committee Office, *Making a submission or appearing before a committee of the Legislative Assembly for the ACT*, November 2008.

¹⁷ See Appendix A – List of submissions to the Inquiry.

¹⁸ See Appendix B – List of exhibits.

- Friday, 13 December 2011.

- 1.17 The Committee held one in-camera briefing on Monday, 30 January 2012 and has resolved to publish the transcript of evidence. It is available on the Assembly's website.
- 1.18 Witnesses who appeared at these hearings are listed in Appendix D.
- 1.19 On the afternoon of Friday, 28 October 2011, the Committee conducted a site inspection of Section 42, Block 15, Griffith, to see at first hand the Brumbies' administration and training facilities, existing bowling greens and surrounding open space.

2 THE PLANNING VARIATION

Introduction

- 2.1 Draft variation to the Territory Plan No 307 (DV307) proposes to rezone Section 42, Block 15, Griffith from commercial CZ6 leisure and accommodation zone to the residential RZ4 medium density residential zone to allow for medium density housing up to 3-storeys in height. The Draft variation also proposed consequential changes to part C(5) of the Multi- unit Housing Development Code (the Code) to include Griffith in the list of suburbs to which Part C(5) applies.¹⁹

History of Section 42, Block 15, Griffith

- 2.2 The current CZ6 leisure and accommodation zoning of the land reflects the long term use of the site as a community bowling club, the third to be established in Canberra.²⁰ The Commonwealth Government granted the land to the Canberra South Bowling Club in 1948 and for 60 years the Club was a focal point of the local community; but in more recent times it faced financial challenges as the popularity of lawn bowls waned.
- 2.3 Canberra South Bowling and Recreation Club Inc (the Bowling Club), a successor to the South Canberra Bowling Club, was formed in 1998 and in the same year began a joint venture with ACT Rugby Union Ltd, a forerunner of the current

¹⁹ Corbell, S., Letter to Ms Mary Porter, Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, *Referral of draft variation to the Territory Plan 307 (DV307), Griffith, Section 42, Block 15 – change of zoning from the commercial CZ6 leisure and accommodate [sic] zone to RZ4 medium density residential zone and consequential amendments to Part C(5) multi unit housing development code*, 23 August 2011.

²⁰ Emerton, D., Rooney, J and Wight, J., *Fifty years at Souths – A short history of Canberra South Bowling Clubs*, CPN Publications, Fyshwick, ACT, 1998.

Brumbies Rugby Club.²¹

- 2.4 The 2004 Rugby off-season delivered major change in the structure of the ACT Rugby Union. A constitutional reform was passed to expand the territory of the ACT Rugby Union to incorporate the Far South Coast and Southern Inland Unions. In November 2004 ACT Rugby Union Ltd was renamed the 'ACT and Southern NSW Rugby Union'. The team name 'ACT Brumbies' was changed to 'Brumbies Rugby' and a new identity was launched to reflect the expanded region of the Brumbies.²²
- 2.5 In 1998 the Brumbies began using part of the Canberra South Bowling and Recreation Club Inc site for training and administrative facilities. While the joint venture may have prolonged the life of the Canberra South Bowling and Recreation Club, it also presented new challenges. The Brumbies need for training space meant the Bowling Club forfeit a source of revenue. In 2007 the Bowling Club went into voluntary administration and the site was sold to the Brumbies Rugby Club on 23 February 2008.
- 2.6 Mr Kevin Gill, President of the Inner South Canberra Community Council noted in evidence that, '... there is already a lot of disquiet in the bowling community about how the acquisition and the takeover of the place happened.'²³ If the land is sold by the Brumbies, the Bowling Club or another bowling club in Canberra will get a maximum of \$100,000.²⁴
- 2.7 Bowling activities were relocated to Canberra West and Forrest Bowling Clubs and from 2008 the Brumbies have been the sole occupier of the site. It comprises buildings used for Club administration, a gymnasium and a partly renovated Club House with a spa recovery facility at the rear of Block 15.²⁵

²¹ South Canberra Bowling and Recreation Club Inc, *Second Annual General Meeting, Chairperson's report*, 16 August 1998.

²² Brumbies Rugby [website], ACT and Southern NSW Rugby – A brief history, <http://www.brumbies.com.au/Team/BrumbiesHistory.aspx>

²³ See: Transcript of Evidence, 4 November 2011, p. 30.

²⁴ Canberra South Bowling and Recreation Club Inc. Papers from Special General Meeting held on 31 January 2008.

²⁵ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011

- 2.8 In 2009 the Brumbies proposed upgrading the adjoining Griffith Oval No. 1, which it did not own and leased from the ACT Government, and relocating the existing facilities to a new headquarters on the Griffith Oval site. However, during consultation with the local community there was debate about the heritage value of Oval No. 1 and the end result was the ACT Heritage Council listing the Griffith Oval on the ACT Heritage Register.
- 2.9 In September 2010 ACTPLA announced it would not support the Brumbies' proposal to rezone Griffith Oval No. 1, which formed part of Section 42, Block 17 from urban space to restricted access recreation. The then Chief Executive Officer of ACTPLA, said the proposal had been the subject of a comprehensive consultation and evaluation process and ACTPLA had carefully considered the submissions from the community as well as detailed planning reports from the Brumbies. ACTPLA considered that location of the Brumbies' headquarters on Block 17 would compromise the heritage values of the site given that the heritage values extended to the landscape surrounding the Oval. He said ACTPLA would proceed with the preparation of a draft variation to the Territory Plan to rezone Block 15, including the Bowling Club, from the current leisure and accommodation zone to medium density residential use. This would follow the usual Territory Plan statutory variation processes, which included public consultation. Preparation of the draft variation would commence following formal advice from the Brumbies, confirming that the Club wished to proceed with that part of the development along with some clarifying information.

Multi unit development code

- 2.10 The Minister's referral letter included reference to consequential changes to Part C(5) of the multi unit housing development code. In response to a request from the Committee for information on the consequential changes to the Multi Unit Development Code, the Environment and Sustainable Development Directorate (ESDD) advised:

Within part C(5) of the code Rule R202 and criterion C202 stipulate requirements for family friendly dwellings, while rule R205 and criterion C205 require 10% of multi unit housing to be suitable for people with disabilities and the aged. However, this part of the code only applies to

the suburbs listed in the pre-amble and does not refer to Griffith. In order to ensure that these provisions apply to the future development of the site, it is proposed to amend DV307 to include an amendment to the pre-amble of Part C (5) of the multi unit housing development code as follows:

This Part of the Code applies to development applications for multi unit housing in the RZ4 – Medium Density Residential and RZ5 – High Density Residential Zones as they apply in Belconnen, Bruce, Hawker, Narrabundah, Woden District and Tuggeranong District and the RZ4 medium density residential zoned areas within Griffith.

It should be noted that the residential codes are currently under review and are reflected in draft variation DV306. In this regard, DV306 applies the above provisions for dwelling diversity in the RZ4 medium density residential zones without specifically listing their suburb or locations. DV306 further expands on the requirements for adaptable dwellings in the current multi unit housing development code.²⁶

The `preamble to *Part C (5) – Multi unit housing – Apartments of three (3) storeys or more in other areas and all multi unit housing in the commercial zones* currently states:

This part of the code provides controls for apartments of three (3) or more storeys in areas not subject to parts C(2) – C(4). Provisions of Part C (1) do not apply where specifically identified in provisions of Part C (5). Except for commercial zones Parts A and B of this Code also apply.

For multi unit housing in the commercial zones Part C (5) applies instead of Part C (1). The requirements should be read in conjunction with the relevant Commercial Codes. Parts A and B of the relevant Commercial Zone Development Code or Precinct Code

²⁶ Environment and Sustainable Development Directorate, *Response to questions from the Standing Committee on Planning, Public Works and Territory and Municipal Services (SCPPWTMS) for Planning, Public Works Territory and Municipal Services*, [24 January 2012], p. 8. See [Appendix F](#) for Response.

replace Parts A and B of this Code for development in the commercial zones.²⁷

- 2.11 On 16 February 2012 the Committee received advice from ACTPLA that proposed amendment to Part C (5) of the multi unit code had been superseded by a technical amendment to the Territory Plan TA2011-27 on 7 October 2011. This part of DV307 had been made redundant and would need to be removed from the draft variation prior to any further consideration of the draft variation by the Minister for the Environment and Sustainable Development.
- 2.12 The Committee is disappointed that the terms of reference for the Inquiry should have changed without it receiving any formal advice from ACTPLA earlier or during the public hearing held on 25 November 2011.

²⁷ ACT Planning & Land Authority, *3.3 Residential zones – Multi Unit Housing Development Code*, Effective: 16 December 2011, p. 77.

3 ISSUES

Introduction

- 3.1 The proposal to rezone Section 42, Block 15 in Griffith has proven highly contentious for several years and remains so. The proposal intertwines a number of complex issues which in the minds of some stakeholders seem almost impossible to separate.
- 3.2 At the 25 November 2011 public hearing the Minister for the Environment and Sustainable Development, Mr Simon Corbell MLA, indicated that he had made a judgement that the proposed rezoning needed to go to the Committee so that the Government and he, as Minister, would have the benefit of the Committee's views before determining whether or not the variation should proceed. The Minister noted that the variation had been initiated during the time of his predecessor, Mr Andrew Barr MLA. The Minister had simply allowed the process to continue to run and then referred it to the Committee for inquiry and recommendations.²⁸
- 3.3 A majority of the submissions received for the Inquiry supported the Brumbies rezoning proposal but most these were not substantive in nature. In general they stated support for the Brumbies and support for urban infill with some authors in Canberra and from places outside of Canberra declaring an interest in moving to Griffith.
- 3.4 The balance of submissions raised a variety of issues about planning, planning processes and issues specific to Section 42, Block 15, Griffith. The major issues considered are discussed under the following headings:
- deconcessionalisation of lease;
 - financial aspects;
 - planning and land use options;

²⁸ Transcript of Evidence, 25 November 2011, p. P64.

- strategic planning;
- heritage and environmental issues;
- flooding;
- traffic; and
- land swap.

Deconcessionalisation

3.5 The lease applying to Section 42, Block 15 is what is termed a 'concessional lease'. A page of the ACT Government's website maintained by the Government's Environment and Sustainable Development Directorate explains concessional leases:

Concessional leases are leases granted for less than market value. They allow the Government to help provide core community and social facilities that benefit the community. For example a concessional lease might be granted to a church or community organisation.²⁹

3.6 In the case of Section 42, Block 15 Griffith a succession of concessional leases had been granted to the South Canberra Bowling Club going back to the early days of the Bowling Club, when the land was divided into smaller blocks (namely Block 3 and Block 4), and which were combined to form Block 15 in 1998.³⁰ In the years immediately following the Second World War it appears the Commonwealth Government, which before self-government had sole responsibility for the National Capital, found a compelling case to establish a community sporting facility in the new suburb of Griffith. It would seem that the compelling case was presented by some determined individuals who were both committed to their local community and entrepreneurial.

3.7 The Commonwealth Government's support of the Bowling Club continued for decades. If not for the waning interest in lawn bowls in the 1980s and 1990s the South Canberra Bowling and Recreation Club Inc would no doubt still exist and

²⁹ See ACT Government website, Environment and Sustainable Development Directorate.
http://www.actpla.act.gov.au/topics/property_purchases/leases_licenses/concessional_leases

³⁰ See Exhibit 14.

continue to benefit from its concessional lease.

- 3.8 At the public hearing on 28 October 2011 Brumbies representatives explained the current situation:

Mr Adams: The Brumbies currently have their headquarters in the old club building—headquarters, gymnasium, training facilities—and they have a short-term licence over the adjacent oval, which obviously is an important part of their training facility. The location suits them fairly well and all of that was working okay, except that the oval was problematic because without security of tenure they were not able to invest in it to the extent that they would like. They have elite footballers. They need a higher level of management of the oval and that is what they were seeking. They also needed the capacity to maximise the actual asset that they have got and to get some return on it to fund some improvements.

The proposal that was put up some time ago was that a new headquarters and training facility would be constructed on the oval site and the oval would be upgraded. That was going to be on the basis that the Brumbies would sublease the oval site from the department of sport and rec. It is important that they were subleasing it and not getting a free and clear 99-year lease, if you like. Under that arrangement it could only ever be the Brumbies. If it was not the Brumbies then sport and rec would have the oval back and give it to some other sporting organisation. So it was not a saleable asset, as far as the Brumbies were concerned, but they were accepting that because all they wanted to do was be the Brumbies.

The club site [Section 42, Block 15] was to be redeveloped for residential. That got a fair degree of public airing and it was decided that the redevelopment of the oval was not an option. So that is off the table. The Brumbies are left with Block 15, which is the old bowling club building, in which they have their headquarters, and a sort of year by year or relatively short-term licence arrangement over the oval. The use of the oval is suboptimal because it is a public oval. They do not have control over it and, importantly, they do not have security of tenure. If they were to sublease it, they would have got a 99-year sublease, whereas at the moment it is a short-term licence.

Investing in the future is problematic because they do not have security of the Oval and utilising the existing building is not an option. It is not suitable for the A-league football arrangements that are now in place. It might have been 15 years ago when they first got there, but Rugby has moved on and moved up to a much higher level.

With the oval being off the table, we came forward with a proposal to vary the plan, only for the bowling club site, which is block 15, to residential only. That means that the Brumbies would leave the site when it was redeveloped and go to a facility elsewhere where they could have a training and management facility allied with an oval that they have security of tenure over, somewhere else in Canberra.³¹

- 3.9 Such development or sale of the land could not happen while a concessional lease applied and so there was a need to 'deconcessionalise' the lease, that is, to change it to a non-concessional lease: put simply, one reflecting the market value of the land. To do this would entail payment of fees to the ACT Government. At the same time the Brumbies faced a second hurdle in being able to develop the land, that of rezoning the land.
- 3.10 The Brumbies found that part of Block 15 had a concessional lease and believed that another portion was non-concessional. To say this was a complicated issue is an understatement. The Brumbies approached ACTPLA to get a determination on the status of the land and ACTPLA advised that the Crown lease over the land was a concessional lease. The determination also advised that the decision was subject to review. The time limit to make a review to the ACT Civil and Administrative Tribunal (ACAT) was 28 days.³²
- 3.11 It is not clear why but the Brumbies did not appeal the decision via ACAT. Some six months later, on 19 May 2011, Susan Proctor, Managing Partner of Bradley Allen Solicitors wrote on behalf of the Brumbies to the then Chief Executive of ACTPLA, arguing that the lease was non-concessional and requesting that a new

³¹ Transcript of Evidence, 28 October 2011, pp. 4-5.

³² See Exhibit 14. Messer, S., Letter to Mr Andrew Fagan, CEO, Australian Capital Territory and Southern New South Wales Rugby Union Club, ACTPLA's decision under section 258 of the *Planning and Development Act 2007* regarding the concessional status of the Crown lease over Section 42, Block 15, Griffith, 23 December 2010 and attached Determination dated 22 December 2010.

Determination be issued, declaring that the lease was not concessional. She wrote:

We note that the legislation provides a statutory timeframe of 28 days for the review of decisions such as this. Given the complexity of this matter and the fact that no third parties are involved we suggest that adherence to the timeframe need not apply in this case.³³

3.12 At the public hearing held on 28 October 2011 the Committee asked the Brumbies about progress with deconcessionalisation and details of the current arrangements. The following is an extract from the transcript of the hearing:

Mr Coe: When was the concessional lease granted that you are currently working under?

Mr Fagan: Originally? That is a good question.

Mr Adams: The original lease—I am sorry, I do not know the exact year, but it was in the 1950s—was granted to two or three individuals, one of them being one of the Cusacks, Stan Cusack, and a few others who just wanted to start a bowling club. The lease went through a number of permutations, and it is very difficult to actually calculate and discern exactly how it travelled. The planning authority has determined not that it is concessional, but that it is partially concessional, because a substantial concessional amount was paid out some years ago.

The planning authority, in looking at it again, has determined that what was paid out was insufficient to pay out the total concession because the land, as it now stands, is a combination of several different pieces. Apparently what was paid out then, when everybody, including the government, thought that the concession was being paid out, did not pay out for the other little bit of land. Under the legislation a lease that is partly concessional, which this one is, is deemed to be a concessional

³³ Messer, S., Letter to Mr Andrew Fagan, CEO, Australian Capital Territory and Southern New South Wales Rugby Union Club, ACTPLA's decision under section 258 of the *Planning and Development Act 2007* regarding the concessional status of the Crown lease over Section 42, Block 15, Griffith, 23 December 2010 and attached Determination dated 22 December 2010. See Exhibit 14

lease. So the process at the moment is to de-concessionalise the lease, but in fact it is to pay the balance of the de-concession amount that has been paid some years ago.

Ms Le Couteur: Have you any idea what that balance is?

Mr Adams: No. We await the planning authority's determination. They will tell us.

Mr Fagan: It is worth noting that at the beginning of this process, in fact, we sought—and as part of our acquisition of the site in the first instance we sought—clarity from ACTPLA with regard to the concessional nature of the site. We did receive advice that in fact the concession had been paid out and removed by virtue of the acquisition process that we went through. It was only as we went to document materials in support of this proposal that that advice was varied. As Tony [Adams] said, they picked up, through what was quite a complex and convoluted process over many years, that a part of the site still remained concessional. That is the process that we are currently going through, just to seek—

Mr Adams: Rather than challenge that, it was easier to accept the planning authority view that it was partially concessional, apply to have it de-concessionalised and pay whatever is necessary.³⁴

3.13 At the 25 November public hearing the Minister was asked for an update on deconcessionalisation. He answered:

In relation to the matters you raise about deconcessionalisation of leases, those are matters which are not yet concluded. There is a process for the deconcessionalisation of a lease. The Brumbies have made application in relation to that matter but that matter has not yet been determined. We are really not in a position to provide any further information about that at this point in time simply because there is an assessment that has to occur that has not yet occurred.³⁵

3.14 The Committee notes that the process of deconcessionalisation is independent of

³⁴ Transcript of Evidence, 25 November 2011, pp. 5-6.

³⁵ Transcript of Evidence, 25 November 2011, p. 61.

the proposed rezoning of Section 42, Block 15 Griffith. Under Section 139 of the *Planning and Development Act 2007*, ACTPLA is the body responsible for evaluating the application. Section 261 of the Act sets out criteria to be used by the Minister in making a decision. It states:

261. No decision on application unless consideration in public interest

- 1) The planning and land authority, or Minister, must not decide a development application to which this part applies under section 162 (Deciding development applications) unless the Minister decides whether it is in the public interest to consider the application.
- 2) In deciding whether it is in the public interest to consider the development application, the Minister must consider the following:
 - (a) whether the Territory wishes to continue to monitor the use and operation of the lease by requiring consent before the lease is dealt with;
 - (b) whether approving the application would cause any disadvantage to the community taking into account potential uses of the leased land that are consistent with the Territory Plan, whether or not those uses are authorised by the lease;
 - (c) whether the application to vary the lease to make it a market value lease is, or is likely to be, part of a larger development and, if so, what that development will involve;
 - (d) whether the Territory should buy back, or otherwise acquire, the lease;
 - (e) whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by retaining the concessional status of the lease.³⁶

3.15 The Minister wrote to the Committee on 13 December 2011, providing an update

³⁶ Australian Capital Territory, Planning and Development Act 2007. *Section 261- No decision on application unless consideration in public interest.*

on the concessional status of the lease. The letter stated:

The planning and land authority determined that on 22 December 2010 the Crown lease over the above block is a concessional lease.

Block 15 (the current block) resulted from the consolidation of Blocks 3 and 4 Section 42 Griffith.

The Crown lease over Block 3 was a rental lease. The rent was assessed at 4% of the unimproved capital value of the lease. Commercial rent was 5% or above.

Block 4 originated from the consolidation of Block 2 and a small area of additional land. Rent for this lease was assessed at 1% of the unimproved value of the block which was a concessional rental rate. Block 4 was granted on 27 May 1983 as a nominal rent lease. However, the Club never paid the full market value for the lease. Therefore, Block 4 remained a concessional lease.

The Crown leases for Block 3 and 4 were consolidated in 1999 to create Block 15 Section 42 Griffith.

The lease contained a provision requiring the lessee to pay the site value of the area previously identified as Block 3 (being the rental portion of block 15). This was a requirement because a rental lease and a nominal rent lease cannot be consolidated. The amount was determined at \$80,000.

On 7 August 2009, the Treasurer waived the land rent and additional accumulated interest to the Territory over that area formerly known as Block 3. The amount waived was \$147,259.13 which was the amount equal to the site value of Block 3 and the accumulated interest. For the purpose of determining the concessional status of a lease, the Planning and Development Act 2007 provides that if a payment is waived by the Treasurer, the debt is considered to be paid.

Therefore, as rent over Block 3 was waived, this portion of the lease over Block 15 was no longer concessional. However, as the Territory has not received the market value for that portion of Block 15 formerly known as

Block 4, the lease over Block 15 is a partially concessional lease.³⁷

- 3.16 The Committee notes the views of Mr Kevin Gill, who appeared on behalf of the Inner South Community Council on 4 November 2011 that from the community’s perspective there is a perceived inconsistent approach in handling the changed conditions applied to concessional leases which were issued by the Commonwealth to encourage Canberra to grow. He said:

Years ago just about every suburb in Canberra had a bowling club. Lots of licensed clubs have bought those out and are progressively closing them down. People may not be playing as much lawn bowls, but those areas could be used for other community purposes including sport and recreational [uses] ...³⁸

- 3.17 On 18 January 2012 the Committee sought information about the various processes and associated timeframes associated with DV307.
- 3.18 On 23 January 2012 the Committee became aware that on 6 January 2012 the Acting Minister for the Environment and Sustainable Development, Mr Andrew Barr MLA, signed a Notifiable Instrument, NI 2012-22 referred to as, Planning and Development (Consideration of Public Interest) Decision 2012 (No 1). A copy of the Notifiable Instrument is at Appendix G.
- 3.19 On 24 January 2012 the Committee clarified with ESDD that ‘processes’ included the process of deconcessionalisation. The following is an extract from the advice provided by ESDD on 24 January 2012:

There are several separate processes that are required to be completed under the Planning and Development Act 2007 before any multi-unit residential development at the Brumbies site in Griffith could occur. In summary these are:

- Territory Plan Variation;
- An [sic] Development Application to remove the concessional status of the lease (deconcessionalise); and

³⁷ Corbell, S., Letter to Ms Mary Porter, Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, *Concessional status – Block 15, Section 42, Griffith – Summary*.

³⁸ Transcript of Evidence, 4 November 2011, p. 29.

- Vary the lease (through a Development Application) to add residential uses and specify the number of units permitted on the site – this would usually be associated with a Development Application for the proposed building(s)

The first dot point, being a variation to the Territory Plan, is of course the subject of the Committee's deliberations. The Minister for the Environment and Sustainable Development, Mr Simon Corbell MLA, referred DV307 to the Legislative Assembly's planning committee and the Minister is required to take into account the committee's report before he can approve a variation and table it in the Assembly.

... the legislation provides for a five-day disallowance period for any Territory Plan variation that is tabled. Importantly, this can occur even if the lease is not deconcessionalised. The consequence of not removing the concessional status of the lease (should the Minister approve and the Assembly subsequently not disallow the proposed variation) is that consent is required from the planning and land authority should the lessee wish to deal in the land. Please note that, in any event, the planning and land authority would be unlikely to approve subdivision of a concessional lease under the Unit Titles Act 2001 as each consequent lease would be concessional and require consent to transfer. The reason that the planning and land authority be unlikely to approve such an arrangement is that this would make administration of the consequent Units Plan cumbersome with each and every unit requiring consent of the Territory to deal. For this reason, historically, where residential development is proposed the concessional status has been removed from such leases being redeveloped. The planning and land authority also receives Development Applications to remove the concessional status of certain leases even where no change to the proposed use is contemplated (it is understood that being able to deal in the lease without the need for consent often makes obtaining finance easier).

I can advise that in his role as the acting Minister for the Environment and Sustainable Development, Mr Andrew Barr MLA, has recently decided, as required by Section 261 of the Planning and Development Act 2007 (Act), that it is in the public interest for the planning and land authority to

consider the Development Application (DA No 201120448) to remove the concessional status of the lease over Block 15 Section 42 Griffith. This action does not approve the deconcessionalisation, rather, it allows the planning and land authority to decide the Development Application. The “public interest” criteria for consideration are listed in Section 261 of the Act. The Minister’s decision is a Notifiable Instrument (NI2012-22) and this has been published on the Legislation Register. The relevant NI can be found at: <http://www.legislation.act.gov.au/ni/2012-22/default.asp> and also includes details of the matters to be considered (and the Minister’s response to those matters) in deciding whether consideration of the DA would be in the public interest.

The application is now under assessment by the planning and land authority, within the Environment and Sustainable Development Directorate. The planning and land authority is required to make an independent decision on the development application relating to the proposal to deconcessionalise the lease as required by the Act. As outlined above, this decision can occur at any time and is not dependent on the outcome of DV307. All persons who made a representation during public notification of the Development Application (for deconcessionalisation) will be advised on the planning and land authority’s decision once made.

The development application currently before the planning and land authority does not seek to vary the current authorised use of the lease for the purpose of a Bowling and Sporting Club. The deconcessionalisation of the lease, if approved, does not in itself provide any additional development rights and will not give approval for further development of building(s) on the site. Also, if approved, a condition of the approval would require the lessee to pay the “payout amount” as worked out under Section 263 of the Act. The process would be finalised (after payment of the “payout amount”) by surrender of the existing lease and re-grant of a new lease which would not include rental provisions or any provisions requiring the Territory’s consent to deal in the lease. Should the Legislative Assembly decide not to disallow DV307 (if approved by the Minister) to change the zone under the Territory Plan and if the

concessional status of the lease is removed, a separate development application is required to be lodged with the planning and land authority to vary the use to add additional development rights. Such an application would be publicly notified. These additional rights, if approved by the planning and land authority, will be subject to the payment of a lease variation charge consistent with the uplift in the value of the lease. Development approval would also be required for any building works on the site. This could be included with an application to vary the lease.³⁹

- 3.20 The Committee then requested ACTPLA to provide a private briefing on deconcessionalisation. The briefing took the form of an in camera hearing at which the Acting Deputy Director-General – Planning provided a briefing. As to the process, the Committee was informed:

Mr Ben Ponton: This is in fact the first application that has undergone the public interest test. It has been going through a DA process since the act was changed in 2008. The *Planning and Development Act 2007* came into effect on 31 March 2008. ... this is the first application under the new legislation.

Previously it was a decision of the minister to deconcessionalise, and it was undertaken through a process of exchange of letters. So an applicant would write to the minister, the minister would refer that matter to the department, the department would review, provide advice to the minister, and the minister would then write to the proponent with his or her decision. If the decision was to support, the letter would advise accordingly and include details of a payout figure.

When the Act was being reviewed, it was decided that it would be more appropriate and more transparent if we had community engagement and community involvement in this process, because, as you can see from this experience, the community does have an interest in deconcessionalisation of crown leases. So the government made the decision at the time that we would require a development application for deconcessionalisation. I

³⁹ Ponton, B, Email dated 24 January 2012 to Senior Adviser, Standing Committee on Planning, Public Works and Territory and Municipal Services.

know the terminology may then create confusion that there is a development that is occurring when in fact that is not the case. There is a process to allow that public engagement.

An alternative would have been for us to write some provisions for the legislation, for the consideration of the Assembly, that created another process, so that there could have been a separate kind of application that would have been notified. Given that we had the processes around development applications, we decided that that would be the simplest option. As I said, this is the first. There are three others that are currently going through the normal processes.

Ms Le Couteur: What amount of notification happens for the deconcessionalisation? Most people involved in the Brumbies are well aware that the Territory Plan variation is happening, but there seems to be total confusion and a lack of knowledge as to what, if anything, is happening with deconcessionalisation. What sort of public notification is there of it?

Mr Ponton: It is the same as any other development application, any other merit track application, which is a sign on the block. That would be on each street frontage. It is put in the Canberra Times, and there are letters to interested parties and to adjoining and adjacent lessees.

Ms Le Couteur: A sign on the block on all street frontages?

Mr Ponton: Yes.

Ms Le Couteur: And in the CT. But you would only have had letters to the people immediately—

Mr Ponton: Adjoining and adjacent.

Ms Le Couteur: adjoining it, which is a dozen or so. It would not have been the people on the other side of Flinders Way?

Mr Ponton: If they were adjacent to the site.

Ms Le Couteur: They are adjacent but there is the creek.

Mr Ponton: Across the road, yes.⁴⁰

- 3.21 The Committee enquired about a social impact statement and was in due course provided with a copy. The Committee also enquired about the next steps:

Ms Le Couteur: What will be the process from now on? Is there any public involvement in it?

Mr Ponton: No. Now that the community consultation period has closed, we do have the comments, or comment, from the community. I will clarify exactly how many. I believe there was one; there may have been more that I am not aware of. The Planning and Land Authority will consider those comments. It will consider the Minister's determination. It will consider the provisions of the act in terms of section 120 of the act. Section 120 of the act has a range of matters that we must consider in determining a development application. We need to look at the relevant matters. Suitability of the land in this case is not a development consideration because there is no development proposal in relation to this aspect. The Planning and Land Authority will then make its decision and notify the lessee and those parties who made a submission of its decision.⁴¹

- 3.22 The Committee was disappointed to find that the deconcessionalisation process was progressing without ACTPLA providing information to the Committee. After questioning, the Committee was provided with a total of eight submissions that ACTPLA had received in relation to Development Application No 201120448 - an application for a lease variation to 'deconcessionalise' the current lease held by ACT and Southern NSW Rugby Union relating to Block 15 Section 42 Griffith.

- 3.23 The Committee's conclusions and recommendations in relation to deconcessionalisation can be found in Chapter 4.

⁴⁰ Transcript of Evidence, 30 January 2012, pp. 107-09.

⁴¹ Transcript of Evidence, 30 January 2012, pp. 110-11.

Financial aspects

- 3.24 Both the Brumbies' original 2009 proposal and that set out in the Planning Report for DV307 involve a residential medium density development. The Planning Report says the development could comprise 150 apartments with the final mix of one, two and three-bedroom apartments yet to be determined.⁴²
- 3.25 The Planning Report makes it clear that the Brumbies wish to relocate to a new headquarters and training facility of a very high standard at a location yet to be determined.⁴³ At the hearing on 28 October 2011 the Committee was told no decision had been made on a new location and, since that time, the Committee has received no further advice from the Brumbies. In summary, the rezoning of Section 42, Block 15 is aimed at generating funds to contribute to the ongoing viability of the Brumbies somewhere other than the current site in Griffith. The Committee assumes that the new location will be somewhere in Canberra but notes that it is possible, even though unlikely, that it could be somewhere else.
- 3.26 The Committee is mindful that financial aspects of the proposed residential development of Section 42, Block 15 are of interest to some in the community but the Committee's view is that financial aspects are not relevant to its task of assessing the merits of DV307. This section of the Committee's Report is provided to assist readers in understanding the background to the Committee's Inquiry into DV307.
- 3.27 The Committee notes ACTPLA's comments in its Consultation Report:

ACTPLA's reasons for supporting the proposed variation are outlined in the draft variation document and they do not include 'the need to ensure the financial viability of the Brumbies Rugby.'

ACTPLA is bound to consider only the planning merits of a proposal as

⁴² CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 39.

⁴³ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 11.

stipulated in part 5.3 of the *Planning and Development Act 2007*. While this can extend to consideration of the financial viability of a proposal, it cannot include the financial viability of a proponent.⁴⁴

- 3.28 A number of submissions noted that the Brumbies need to generate money and this has coloured the way they view the draft variation. There have been criticisms voiced in submissions that the Government is seeking to prop up a football team by giving it land to sell.
- 3.29 It is not uncommon for a government of any political persuasion to want to support a sporting organisation such as the Brumbies. When such teams achieve success they have a very positive effect on the wider community spirit, motivating others to achieve and they also have the potential to bring valuable business to Canberra. For example, home games can result in significant numbers of visitors to Canberra spending a lot of money on accommodation, restaurants and other services. The Committee sought to understand as fully as possible the nature and extent of the financial relationship between the current ACT Government and the Brumbies. The Committee recognises that the Brumbies have received financial support from successive ACT governments dating back to the Carnell Liberal Government, which had facilitated the Brumbies' move to Griffith and its joint venture with the South Canberra Bowling and Recreation Club Inc.⁴⁵
- 3.30 On 25 November 2011, in reply to a letter from the Committee, the Minister explained the financial relationship between the ACT Government and the Brumbies. He noted at the outset that, as the Minister for the Environment and Sustainable Development, he did not have direct responsibility for the financial matters relating to the Brumbies and so had sought advice from the Directorate for Economic Development Directorate, Sport and Recreation Services.⁴⁶

⁴⁴ ACTPLA, *Report on Consultation*, August 2011, p. 13.

⁴⁵ Australian Capital Territory. Department of Education and Community Services, *Annual Report 1998-99*, p. 98. The Brumbies received \$1.5m to extend the building. This was the Brumbies' contribution to the Joint Venture with the South Canberra Bowling and Recreation Club, the latter contributing \$2.1m.

⁴⁶ Corbell, S., Letter to Ms Mary Porter, Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, [*Financial relationship between the Territory and Brumbies Rugby*], 25 November 2011. See Exhibit 13.

3.31 In summary:

- Performance Fee Agreements (FPAs) secure the ongoing tenure of the Brumbies (and Raiders) games at the Canberra Stadium, delivering commercial returns to the Stadium to support its operations and the associated activities conducted by Territory Venues and Events;
- a PFA for 2004-09 has been succeeded by one agreed in 2009 which would run for six years until 2015. The total annual package began at \$1.555m and increased to \$1.814m in 2015;
- \$60,000 was provided in 2011 as the first part of a 3-year triennial funding commitment for community rugby promotion;
- a Government commitment of \$1.5m was announced in May 2001 to upgrade the playing surface at Griffith Oval but after the Heritage Council decided to place Griffith Oval on the ACT Heritage Register no part of the \$0.05m that was available for 2009-10 was provided to the Brumbies.

3.32 Expanding on this last point the Minister wrote:

On 14 September 2010, the then ACT Planning and Land Authority decided not to proceed with the rezoning of the oval, based upon the heritage considerations. It is understood that the Brumbies consider it no longer viable to maintain a presence at Griffith.

In 2011 the Brumbies completed a study exploring a range of other options that remains subject to continued consideration. While the Government's initial \$1.05m commitment was linked to Griffith Oval, it was also intrinsically linked to the Brumbies - \$50,000 of this amount was provided to the Brumbies in September 2011 to help support the cost of their facilities options study. The remaining \$1 million is yet to be expended.

I would point out that the Environment and Sustainable Development Directorate has had no involvement to date in the above funding

arrangements, or in relation to the 'facilities options study'.⁴⁷

3.33 The Committee notes that:

- the Brumbies operate as a franchise of Australian Rugby Union;
- based on publicly available financial statements in the Australian Rugby Union's Annual Report 2010, the franchise owner and its franchisees are exempt from income tax;⁴⁸
- the Brumbies Rugby Union describes itself as a not-for-profit community based organisation but also says its financial arrangements are commercially confidential.⁴⁹

3.34 In his submission to the Inquiry, Mr Tony Powell provided an estimate of amounts he thought likely to be involved in the sale of Section 42, Block 15. They are presented in Table 3.1.

3.35 The estimated share of profits from the sale of Section 42, Block 15, Griffith is in Table 3.2. The underlying assumption in Mr Powell's estimates is that having obtained a variation to the lease and resolved the issue of deconcessionalisation the site would be sold to a developer.

⁴⁷ Corbell, S., Letter to Ms Mary Porter, Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, [*Financial relationship between the Territory and Brumbies Rugby*], 25 November 2011, p. 2. See Exhibit 13.

⁴⁸ See Australia Rugby Union, Annual Report, 2009-2010

⁴⁹ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, Appendix 8: Public Consultation Report.

Table 3 1 – Estimated dollar amounts involved in sale of Section 42, Block 15

Item	Amount (\$ millions)
Block 15 - Current value (concessional lease)	3.000
Block 15 - Enhanced value after re-zoning	19.500
Betterment Value	16.500
Change of Use Charge @ 75% Rate	12.375
Residual land value after payment of Change of use charge	4.125
Enhanced value of land for the Brumbies	7.125
Developer gross profit after sale of 150 units	15.000
ACT Treasury receipts from betterment tax and stamp duty	16.375

Source: Powell, A. J., Submission. 10 December 2011, p. 9.

Table 3.2 - The estimated share of profits from the sale of Section 42, Block 15, Griffith

Organisation	Share (%)
Brumbies	18.0
Developer	39.0
ACT Treasury	43.0
Total	100.0

Source: Powell, A. J., Submission, 10 December 2011, p. 9.

- 3.36 As stated at paragraph 3.26 the Committee's view is that financial aspects of the proposed residential development of Section 42, Block 15 are not in any way relevant to its assessment of DV307.
- 3.37 Press reports as early as December 2010 indicated that the Brumbies had been in discussions with the University of Canberra with a view to moving there.⁵⁰

Planning and land use options

- 3.38 Land use in the ACT is governed by:
- The Territory Plan;
 - The Canberra Spatial Plan;
 - The sustainable transport plan;
 - The Statement of planning directions issued by the Minister for the Environment and Sustainable Development in 2002.
- 3.39 In the case of Griffith, there is an additional plan, *The Griffith Neighbourhood Plan*, developed by ACTPLA in consultation with residents in 2004. This plan contains a vision for the neighbourhood:

Planned by Walter Burley Griffin in 1918, Griffith will remain a peaceful, attractive, safe, accessible neighbourhood focused on a central park, which gives it a unique identity. The historical significance and 'garden suburb' character of its streetscapes, open spaces and single storey residential buildings will be valued. Griffith will offer lifestyles suitable for all age groups and well utilised, centrally located, mixed use community facilities. It will have unique and vibrant commercial centres. Griffith will be recognised as an original garden city suburb and its unique character will be respected.⁵¹

- 3.40 The strategies documented in the Neighbourhood Plan and illustrated in the accompanying drawings are to be read in conjunction with the Territory Plan

⁵⁰ Thistleton, J., 'Residents promise a fight as Brumbies' plan progresses', *The Canberra Times*, 14 December 2010, p. 5.

⁵¹ ACT Planning and Land Authority, *Griffith Neighbourhood Plan – A sustainable future for Griffith*, Canberra, [2004], p. 4.

and any other relevant ACT Government standards, policies and guidelines. No part of the Neighbourhood Plan overrides the Territory Plan. Where relevant, policies to implement strategies in this Neighbourhood Plan are proposed for incorporation in the Territory Plan through the draft variation process.

3.41 Similarly the Neighbourhood Plan cannot override the National Capital Plan, which is prepared and administered by the National Capital Authority under the ACT (*Planning and Land Management*) Act 1988.

3.42 The Brumbies' Planning Report found nothing in the Griffith Neighbourhood Plan to mitigate against the proposed residential development of Section 42, Block 15 and cited the intent of the Spatial Plan set out on page 12 of the Neighbourhood Plan as supportive of their proposal:

The Canberra Spatial Plan's Strategic Direction responds to changes that will occur within the community of Canberra over the next 30 years and beyond. Population growth, demographic change and household change underpin the need to plan for growth and change in Canberra. In order to ensure that we can sustainably provide for this community of the future, The *Canberra Spatial Plan* puts in place a framework to accommodate a range of population growth scenarios, up to half a million for the Canberra-Queanbeyan metropolitan area.⁵²

3.43 The Brumbies concluded:

The opportunities presented by Block 15 fulfil these objectives, to sustainably provide for the future community, recognising the population growth of the city and the changing demographics of Griffith, are apparent. A key initiative set by the Spatial Plan, also called up in the neighbourhood plan is to encourage high density development within the existing urban area.⁵³

⁵² CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 39.

⁵³ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 23.

3.44 This was not the conclusion of others. For example, the Griffith/Narrabundah Community Association (GNCA) found the Brumbies' proposal to be inconsistent with the Canberra Spatial Plan:

The location is not shown in the Spatial Plan as being within any of the areas designated for residential intensification nor as being an area that would be targeted for future residential development. *The Spatial Plan* is clear about where intensification will occur:

- Rather than being dispersed throughout the suburbs, intensification will occur at major employment centres (Civic, the town centres and Barton), along the major Griffin legacy boulevards of Northbourne Avenue and Constitution Avenue and in major urban renewal sites (such as Kingston and west Fyshwick); and
- Existing low density residential areas will generally not be subject to residential intensification.⁵⁴

3.45 The GNCA's analysis also found the proposal to be inconsistent with the *Statement of strategic directions*:

A wide range of housing types will be permitted in identified residential areas close to commercial centres and some major transport routes to increase choice; maximise opportunities for affordable housing; and secure some intensification of development consistent with maintaining residential amenity. Outside of these areas, planning policies will protect the typically low density, garden city character of Canberra's suburban areas. (Principle 2.5)

In addition, it is inconsistent with a number of other principles in the *Statement of Strategic Directions*, including the need to make provision for and safeguard sites for community, cultural, sporting and recreational facilities; the need to reflect land capability constraints (eg potential for flooding); and the need to retain Canberra's unique landscape setting,

⁵⁴ Griffith Narrabundah Community Association, *Submission*. Canberra. [8 December 2011], p. 12.

safeguard visual amenity and protect vegetation and other important features of the landscape.⁵⁵

- 3.46 The GNCA's concerns are not limited to the Brumbies' interpretation of the *Spatial Plan* and *Statement of strategic directions*. It has found fault in the approach of ACTPLA through: (a) its promotion of DV307 while there is a review of the Territory Plan in progress which seeks to examine the merits of residential intensification strategies⁵⁶ and (b) its use of 'spot rezoning', a form of cherry-picking land to re-zone:

Examination of the Territory Plan map reveals that in central Canberra (the Inner South and Inner North) there are no areas zoned RZ4, which are not on or very close to a major arterial road/transport route (such as Northbourne Avenue), or contiguous with Town or local shopping centres or the RZ2 areas that surround those centres.⁵⁷

- 3.47 Various submissions, including that made by the GNCA, commented that ACTPLA's support of the Brumbies' analysis of alternative land use was questionable. There was no indication of a proper examination of possible alternative uses for Block 15.
- 3.48 Section 4.6 in the Brumbies' Planning Report states that, 'This section of the Report addresses the demand for alternative uses permitted under the existing zoning and the advantage and disadvantage of the alternative land use options.'⁵⁸ There is no mention of the methodology used to assess demand for alternative uses.
- 3.49 Table 4.6.1 in the Planning Report is titled 'Block 15 Section 42 CZ6 Leisure and Accommodation Zone' has three columns. Column 1 lists 29 possible uses for Block 15.⁵⁹ In Column 2, against each possible use, is an assessment of demand

⁵⁵ Griffith Narrabundah Community Association, *Submission*. Canberra. [8 December 2011], pp. 12-13.

⁵⁶ Details of the Territory Plan Review can be found on the ACTPLA website:

http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan

⁵⁷ Griffith Narrabundah Community Association, *Submission*. Canberra. [8 December 2011], pp. 13.

⁵⁸ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 35.

⁵⁹ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 36..

for uses under the existing zone, the rating levels being high, medium and low. And, in Column 3, for each potential use and rating there is a very brief comment to explain the rating.

3.50 Some ratings and comments are self evident but a number of ratings and their explanations are difficult to accept. For example, possible alternative land use 'Commercial Accommodation' is said to have a demand that is 'low' and the comment is that a, 'Hotel or motel would be an appropriate use but [there is] no current demand'. This is at odds with the evidence given at the 28 October 2011 public hearing to the effect that the Brumbies had made a development application for a hotel on Section 42, Block 15. The Committee was told that construction of a hotel was on hold due to ACTPLA giving DV307 what is termed 'interim effect'⁶⁰ but remained an option if rezoning does not occur.⁶¹

3.51 Various other possible alternative uses are dismissed in the Planning Report when in reality one or more in combination could prove very suitable on the site. Examples of possible uses under the current zoning include:

- community use facilities (such as child care centre, community theatre, educational establishment);
- a craft workshop (another Assembly committee is currently inquiring into a site desired by both a visual arts organisation and performing arts organisation);
- parkland (open space or something unusual like a maze would be in keeping with the Garden City principles Walter Burley Griffin intended for Griffith. Griffith is one of the few Canberra suburbs for which he prepared specific plans);
- a restaurant (the increasing number of restaurants in and near Manuka point

⁶⁰ Draft variations may have interim effect for a defined period meaning that during the defined period, in addition to not doing anything inconsistent with the Territory Plan, the Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the Territory Plan if it were varied in accordance with the draft plan variation. See: Environment and Sustainable Development page on ACT Government website:

http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan/territory_plan_master_page

⁶¹ Transcript of Evidence, 28 October 2011, pp. 2-3.

to Canberra’s continuing growth in demand for restaurants.⁶² Proximity to Manuka would attract interest in the Manuka/Griffith area. On the other hand, good quality establishments not close to other restaurants in Canberra such as Delissio in Curtin, The Canberra Yacht Club in Yarralumla and the Ottoman in Barton remain popular and financially viable); and

- a tourist facility (an art gallery cum restaurant such as the Beaver Gallery in Deakin could prove very successful on Block 15 and would not be that far from the Kingston arts precinct).⁶³

3.52 The Committee is of the view that ACTPLA should have been more rigorous in assessing alternatives and, based on the Consultation Report, so too the Brumbies.

3.53 The Committee notes ACTPLA is looking to increase the supply of land for the Community Facility (CF) Zone, which includes independent retirement accommodation.⁶⁴

Strategic planning

3.54 Strategic planning for the urban environment is a challenge for any city. Chicago architect Walter Burley Griffin understood the urban environment all too well and was a proponent of Garden City design principles which date back to the 1920s in England. In June 2012 it will be 100 years since he wrote:

I have planned a city not like any other city in the world. I have planned it not in a way that I expected any government authorities in the world would accept. I have planned an ideal city – a city that meets my ideal of the city of the future.⁶⁵

⁶² Canberra has the highest number of restaurants per capita in Australia, serving everything from fine dining to great take away from the local shops. Source: <http://www.visitcanberra.com.au/en.aspx>

⁶³ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 37.

⁶⁴ Australian Capital Territory. Environment and Sustainable Development Directorate, *Report on consultation, Draft variation to the Territory Plan 307*, Canberra, August 2011, p. 16.

⁶⁵ McKenzie S., et al., *The Griffin legacy*, National Capital Authority, Australia. 2004. [p. vi].

- 3.55 Canberra is yet to reach its full potential. The car dominates and there is a seemingly impossible challenge to give the City the transport infrastructure it needs. Cities with much larger populations thrive without reliance on the car while Canberra remains reliant on the car for a variety of reasons, including urban density.
- 3.56 At the public hearing on 4 November 2011 Mr Kevin Gill, then President of the Inner South Canberra Community Council (ISCCC), a peak body for organisations such as the GNCA, commented on the planning challenges for Canberra:

I think there is a great deal of mistrust out there in the community. They [the community] understand that infill and redevelopment are necessary given the landlocked nature of the ACT. They are not against infill and redevelopment but they are against bad infill and redevelopment, the inconsistent application of planning rules and regulations, and general statements that seem to indicate that we are in favour of one thing and when a proposal comes out it looks like it is recommending the opposite to the principle that has been enunciated generally by public figures in the ACT on occasions.

So the [community is] ... looking for consistency, they are looking for transparency, they are looking for fairness and they need to rebuild their faith in the planning system of the ACT. They want a system that builds on what we have, not takes away what we have. They do not want to end up having the urban sprawl of outer Sydney or things like that. They want Canberra the bush capital. In essence, they want the space between places. Better education of the population to understand the need to go up in certain areas and the principle of living closer to work and all that is a good idea. But when the inner south particularly has been cherry picked—all through Deakin and Griffith in particular—that is what concerns us. It is not purely a backyard NIMBY [‘not in my back yard’] type issue. It is about consistency and quality of approach.

One of the things that have caused this is the lack of a strategic plan for each of the suburban and regional areas of the ACT which underpin or are part of the Territory Plan. Neighbourhood plans have been criticised for being too picturesque rather than precise to be used in a legal sense. There

needs to be a firm commitment from the ACT Government that in the future there will be development of strategic plans that interlock the smaller areas of Canberra into the larger areas of Canberra and then part of the territory plan that can be used in the whole process.

We [the ISCCC] are pleased that the planning authority have indicated next year that they will be using virtual reality computerisation to help explain development applications. We would hope to see executive summaries of every application, instead of forcing people that are lay people to go through myriad development applications which are totally lacking. We do not have the ability to grasp a 200-page document. All those things as we move along will improve the public's perception of the planning process.⁶⁶

[I] ... just to throw something out of the left field for what it is worth, I just walked up what is called the High Line in New York,⁶⁷ which was a train track, a flight up off the ground, and it is now the most popular tourist and recreational facility that I have seen. Hundreds of people are using it.

There was vision and thought about how to change things like this, give the community what it wants and also the organisation can actually make a benefit out of it. It is really about strategic thinking, rather than just saying, 'This is a corner that looks good; let's do something with it.' We have experienced that in Deakin, in Kent Street, recently, to a great amount of angst to the Deakin Residents Association. We have got to stop this sort of block cherry picking and think strategically.⁶⁸

- 3.57 The Committee notes that cities throughout the world face the same challenge: that of preserving open space, and in some cases finding more open space, while allowing increases in the urban density. Examples of successes, such as the High Line in New York, are at Appendix E.

⁶⁶ Transcript of Evidence, 4 November 2011, p. 28.

⁶⁷ Details of the High Line, including photographs and videos, can be found at: www.thehighline.org/

⁶⁸ Transcript of Evidence, 4 November 2011, p. 33.

3.58 At the public hearing on 4 November 2011 the Committee asked Mr Viv Straw, President of the Planning Institute of Australia (PIA) about the importance of open space. He explained there was a difference between public open space, which PIA viewed as sacrosanct and private open space such as bowling greens on Block 15. He said the concept of open space is overlain by a concept of how accessible it is to the general public.

3.59 In terms of the proposed residential development of Section 42, Block 15, Griffith, the PIA was supportive but, '... whilst you have an increase in density here, we would like to see some protection of amenity for open space in the future development and design of the site, which obviously is another stage.'⁶⁹ He added that in terms of strategic planning, the PIA preference was for more time to assess the opportunities for sites such as Block 15 and that in terms of urban infill, 'This probably would not have been a site that would have been picked out as being one that you would do first.'⁷⁰

3.60 The Committee observed that, in general, once the issue of zoning was resolved, a proposed development moved to 'the DA stage' where there was only a requirement to comply with the Territory Plan and that was often the end of the matter. The Committee questioned whether there was a better way for the Committee to apply specific caveats. Mr Straw responded by drawing to the Committee's attention a new *Urban Design Protocol* developed by key stakeholders throughout Australia, including the ACT Government Architect. It had been issued by the Urban Strategies Unit in the Commonwealth Department of Infrastructure and Transport. The Protocol has 12 principles that help planners and communities alike to balance amenity - transport amenity, open space amenity, visual amenity, community growth and development issues.

3.61 The Protocol says about the public realm:

Much of urban design is concerned with the design and management of publicly used space (also referred to as the public realm or public domain) and the way this is experienced and used. The public realm includes the natural and built environment used by the general public on a day-to-day

⁶⁹ Transcript of Evidence, 4 November 2011, p. 41.

⁷⁰ Transcript of Evidence, 4 November 2011, p. 41.

basis such as streets, plazas, parks, and public infrastructure. Some aspects of privately owned space such as the bulk and scale of buildings, courtyards and entries that are traversed by the public or gardens that are visible from the public realm, can also contribute to the overall result. At times, there is a blurring of public and private realms, particularly where privately owned space is publicly used.⁷¹

- 3.62 Such blurring had been a feature of Section 42, Block 15 by virtue of it being a bowling club, which was visually accessible, and by being adjacent public open space which created a sense of ownership of the entire space.
- 3.63 Consideration of strategic planning highlighted the role of public transport in urban design. Mr Straw talked about the need for transport oriented design or TOD:

Mr Straw: In Sydney and Melbourne there are a number of developments that use what we call TOD principles, transport oriented design, so they are designing things around transport facilities and intensifying development.

There is quite a bit of it in the redevelopment of Newtown, Alexandria. I have got a mental blank about the name of the place but where the old sort of Leyland car facilities were in Sydney; I just cannot remember the suburb, but certainly around Newtown, Alexandria and places like that in Sydney, and certainly around Richmond in Victoria there are a number of these infill developments. In Melbourne there are tram lines and stuff, light rail that helps considerably. Certainly that type of development we would suggest should be emulated. We are not suggesting massive height or massive density. These are moderate changes that should be stepped out over time.

Ms Porter (Chair): Mr Coe.

Mr Coe: In terms of that transport oriented design, this particular site is adjacent to a sub-arterial road at best in Flinders Way and really I would imagine people would still need a car to live in this sort of property.

⁷¹ Australia. Department of Infrastructure and Transport. *Creating places for people – An urban design protocol for Australian cities*. December 2011.

Mr Straw: Yes, I think they would.

Mr Coe: So it is not quite creating that cultural shift and that lifestyle shift that perhaps living in the city or living on Northbourne Avenue might create. So to that end does the fact that there are relatively few redevelopment options on arterial roads leave the Planning Institute in a position whereby, 'This is pretty much the best we have got for the time being; therefore it is a good development,' whereas in actual fact there might be lots of other better locations but they are not actually on the table for ticking or flicking?

Mr Straw: Two things: one of the things we believe needs to happen is greater diversity in the housing market. So, yes, this is not ideal to turn into a TOD development—in fact lots of Canberra is not—but what it does provide is for additional housing styles within an existing suburb that either will attract more people in or provide for people who want to change their housing style but do not want to move away. So that is the churn issue. A number of people leave communities but they do not necessarily move far away. They may well stay in Canberra but they would prefer to stay where they are. We are thinking about younger people who want to live close to where they have grown up or older people who want to stay close to where they have lived and raised children—do not want to stay in the large house on the large block of land but want to stay within the same community. So, yes, this site provides a number of things that we think are good but it does not provide the transport shift that we would like to see in some other sites. That is probably the fairest way I can think of to answer your questions.⁷²

- 3.64 The principle that urban infill should happen near public transport is in various ACT strategies and plans but as the GNCA and various other submissions observed the logic of the proposed RZ4 zoning falls down because the Section 42 Block 15 is not close to existing public transport routes.

⁷² Transcript of Evidence, 4 November 2011, p. 41.

3.65 In response to such criticisms, ACTPLA wrote:

... there is a bus services [sic] (No 4) half hourly, with a bus stop next to Griffith oval, linking the site to key commercial and employment centres ...

The site is also well located to provide opportunities for use of alternative modes of transport, with access to existing cycle and pedestrian network[s] including a shared pedestrian/cycle pathway in the verge along Flinders Way to Manuka.⁷³

3.66 The distance from the current entrance of the Brumbies HQ in Austin Street to bus stops in Manuka is 1.0 km and the walking time is 12 minutes. A more direct route is possible through adjoining public open space but there is no paved path.⁷⁴ A number of bus services are accessible in Manuka.

3.67 How many new units were planned for Canberra and in particular the Inner South was considered at the public hearing on 25 November 2011. Following evidence from Mr Powell, who quoted an article from *The Canberra Times* of 19 November 2011 that 8,000 apartments are in the pipeline for the next three years, the Committee sought comment from the Minister:

Ms Porter (Chair): Minister, the previous witness talked about the number of new units that are in the pipeline for the ACT and the fact that quite a lot of these will be on the south side of Canberra. ... I was just wondering whether you have any information about the spread of those units across Canberra—where they are planned to be established. That is probably a bit of a tall ask and maybe it can be taken on notice.

Mr Corbell: I can certainly take it on notice and advise you of where there are live or granted development approvals for multi-unit development. It is important to note that most multi-unit development is driven by private sector development decisions on land that is already leased. In a smaller

⁷³ ACT Government. Employment and Sustainable Development, *Report on consultation, Draft variation to the Territory Plan 307*, Canberra, August 2011. pp. 19-20.

⁷⁴ See Google maps:
<http://maps.google.com.au/maps/ms?ie=UTF8&t=h&oe=UTF8&msa=0&msid=106409486396688109914.0004586a047d8ae3b7cc2>

number of circumstances multi-unit development will be occurring as a result of land sales by the government itself—for example, Kingston foreshore—so it will depend on the sites. But certainly we can seek to provide you with an analysis of that.⁷⁵

3.68 In a letter dated 13 December 2011 the Minister advised, ‘According to the records of the planning and land authority, the total number of units approved over the past two years was 3,400.’⁷⁶

Consultation

3.69 The Brumbies’ Planning Report outlines consultation undertaken prior to submitting the Planning Report to ACTPLA. ACTPLA requires extensive public consultation be undertaken as part of the preparation of a planning report.⁷⁷ The consultation activities in the Planning Report for Section 42, Block 15 are associated with the Brumbies’ original proposal to redevelop the Griffith Oval (Section 42, Block 17):

- newspaper notification (14, 18 and 21 November 2009);
- local resident notification;
- notification of public information sessions on the ACT Brumbies website;
- Email advice of the consultation and public information sessions to general membership and supporters;
- community information sessions on 23 and 24 November 2009.

3.70 More detailed information is provided in Appendix 8 to the Planning Report.⁷⁸

⁷⁵ Transcript of Evidence, 25 November 2011, p. 56, 66.

⁷⁶ Corbell, S., Letter to Ms Mary Porter, Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services. Canberra. 13 December 2011.

⁷⁷ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 51.

⁷⁸ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, Appendix 8.

- 3.71 During 2010 various Government Ministers stated their opposition to the proposed changes. The ACT Heritage Council decided to list the Oval on the ACT Heritage Register and in September 2010 ACTPLA announced it would not support the Brumbies proposal.
- 3.72 In December 2010 the ACTPLA Chief Executive announced support for a draft variation to the Territory Plan which involved a residential development on Section 42, Block 15.
- 3.73 DV307 was released for public comment on 25 January 2011. The closing date for submissions was 15 March 2011. A total of 114 submissions were received during the formal public notification period. Two additional late submissions were accepted and were considered as part of the public consultation. The majority of submissions objected to the proposed rezoning and question the merits of the proposed RZ4 medium density zone. Many requested a more thorough review of alternative zonings and potential community related uses for the site. ACTPLA's report on its consultation was released in August 2011 as was DV307.
- 3.74 Other elements of the consultation include:
- Notice of the consultation was published in a daily newspaper, *The Canberra Times* Saturday 29 January 2011 and in the community notice board in *The Canberra Times* on Saturday 12 February 2011.
 - Four A1 size posters were erected around the site on 9 February until late March 2011. The posters were located on the Austin and La Perouse St frontages and on the corner.
 - Notice of the consultation was placed on the ACTPLA web site along with a copy of the draft variation and supporting documents between 25 January 2011 and 15 March 2011.
 - The draft variation was also notified on the ACT Government community engagement website from 11 February 2011 to 11 March 2011:
 - A consultation notice required under the Act was placed on the ACT legislation website as Notifiable Instrument- NI2011-18.
 - A pamphlet was delivered to approximately 350 dwellings close the site by a private mail delivery service.

- ACTPLA staff also distributed flyers to businesses and shops in Griffith, and in Manuka in the blocks bounded by Furneaux St and Bougainville St, Flinders Way and Canberra Avenue

3.75 At the public hearing on 28 October 2011 the Committee asked about consultation:

Mr Coe: ... the consultation that you have done as a proponent, primarily in 2009, I understand—that was done when the thinking was that you were going to develop both the oval and block 15? Is that correct?

Mr Adams: Yes.

Mr Coe: Has there been any substantial consultation done since then by you as a proponent whereby the proposal would be just redeveloping block 15?

Mr Fagan: No additional—

Mr Adams: The club is always open to talk to anybody who wishes. The original proposal was downsized to what we now have. We then proceeded to formalise that as a draft plan variation. That has been publicly notified. That has attracted, obviously, a lot of commentary. It had a wide public airing. That is continuing with hearings like this—your process—and will continue through the Assembly process. I believe that we are now in a situation where anybody who wishes to be aware of this either is already aware of it or is readily able to become aware of it. The Brumbies club is there and it is open for business every day. Anyone who wants can go and visit and ask questions of Andrew or whatever. Also, when and if the plan variation is finalised, there is a new process of development application for any development of the site, which would be publicly notified. We would be subject to all of the usual approval—notification approval and appeal processes.

Mr Fagan: I think it is fair to say that we do not arrive here without this matter being well known amongst those that might have a perspective or an opinion. I have had two or three meetings with representatives of the Griffith and Narrabundah residents association, some of whom are here today. As I said, there has been significant public scrutiny of the matter,

probably given our profile. Certainly there have been two thorough public consultation processes that have been held, firstly by ACTPLA and then through this committee. Then obviously, as Tony said, there will be a further process that will continue through a DA process. It is worth noting, Mr Coe, just for clarity, that the original process to the new process essentially just removes one component piece.

Mr Adams: In fact, it removed what—

Mr Fagan: It removed what was the overwhelmingly controversial public piece, but it did not change what was proposed for block 15.

Mr Coe: That is what I am getting at. Because that was, as you said, the most controversial aspect of the development—because block 15 was in effect dwarfed by the enormity of the oval being redeveloped—does it mean that block 15 was not scrutinised to the same extent as the oval?

Mr Adams: There was substantial comment in the first round about the residential component. There was a clear understanding; the concept plans clearly indicated what was to happen. I think that there was a pretty clear understanding and a fair bit of commentary on the residential as well as the oval proposal. The oval was probably considered to be more significant, but I do not think anybody was—it would have been quite hard to have not understood the residential proposal as well.

Mr Coe: How has the feedback or consultation you have received changed or impacted how we have got to here?

Mr Fagan: Sorry, how has the—

Mr Coe: How has the feedback or consultation that has been conducted impacted the plans on the table today? How has that consultation actually been taken on board?

Mr Adams: It has obviously reduced the scale by taking the oval component out. The residential component—most of the commentary on the residential was a preference to do nothing or not do residential at all. I do not think there was too much commentary about the nature of the residential because that is unknown and that would be subject to—well, it is unknown in its detail—a future development application and the

process there. There was an understanding that were there to be residential development, it would be under RZ4 with an 80 per cent plot ratio and three storeys high.

The commentary was not so much 'less residential', but 'no residential'. That really was not an option. So there has not been much change to what is considered there. I am noting also that the RZ4 residential zoning proposal, we believe, is the right zoning but it is also the planning authority's view that it is the correct zoning, or it would be an appropriate zoning for the site.

Ms Porter (Chair): I want to go to Ms Le Couteur now but I have a quick question on the back of Mr Coe's question. Is this information about where you were going and where you are going now on your website, Facebook or on one of the other sites?

Can people who prefer that kind of communication tool find out what is going on with the Brumbies instead of coming into the club to talk to someone?

Mr Fagan: In terms of the current submission?

Ms Porter (Chair): Yes.

Mr Fagan: We do not have anything on any media communication platforms around where we are going because that is unresolved. It is just an ongoing process for us. Obviously, it is not particularly subject to this. It is a by-product of this process. We have had on our website over the course of the last couple of years at several points in time the planning report, the concept plans, contact details and the like.⁷⁹

3.76 Various submissions and witnesses expressed dissatisfaction with the consultation or lack of it associated with the proposal to rezone Section 42, Block 15. Local residents focussed on the two information sessions held in 2009 as the sum total of community consultation by the Brumbies.

⁷⁹ Transcript of Evidence, 28 October 2011, p. 9.

Heritage and environmental issues

3.77 Heritage concerns were raised by a number of submissions. Organisations such as the GNCA were concerned to preserve Section 42 Griffith in its entirety seeing it as a heritage issue linked to Walter Burley Griffin's prize-winning plan for Canberra. Griffith was one of a small number of suburbs Griffin and his wife Marion Mahony Griffin had designed. The President of the GNCA commented to this effect at the public hearing on 13 December 2011:

Ms Fanning: ... My next point is that it [the development of Block 15] would conflict directly with aims to preserve the Griffin legacy, because of its impact on the landscape and the way in which it would seriously detract from the garden city character of the area. We have emphasised in our submission that block 15 is a significant part of a major corridor of open space, parks and sportsgrounds that runs from Red Hill to the lake and that has existed since early Canberra days.

It would have adverse impacts on the heritage values of Blandfordia 5 and the Griffith Oval; it would destroy the integrity of Griffith park; it is inconsistent with the Griffith neighbourhood plan; it would result in the loss of many trees ...⁸⁰

3.78 A submission from Mr Tony Powell, made similar comments. He also made the following points:

The National Trust (ACT) has published strongly expressed support for heritage listing of Griffith's 'garden city' qualities in the following terms:

This form of planning was aimed at creating a pleasant social character of urban living. Curvilinear street layouts often following the natural contours, planned siting of reserves, creation of space, tree plantings and hedge plantings, visual recognition of the natural/landscape and a consistency in the form and siting of

⁸⁰ Transcript of Evidence, 13 December 2011, p. 85

housing were all fundamental principles in this kind of planning.⁸¹

In my May 2011 submission I referred to the heritage importance of what the NCDC envisaged as being a proposed 'Griffin Heritage Trail', which included the Red Hill to Bowen Park string off-linked parks that reflects the ideas and efforts of the National Capital's early planners and designers.

ACTPLA has simply dismissed this information out of hand because it couldn't obtain verification from the NCA, which as is well known is totally bereft of any planning or architectural personnel. This makes a mockery of ACTPLA's statutory obligation to give due consideration to information from the community and heritage groups, town planners, architects, landscape designers, engineers, land surveyors, valuers and cultural historians, all of which is intended by the enabling legislation to provide inputs into the Authority's evaluation of re-zoning applications such as this present one.

ACTPLA's Consultation Report contains frequent reference, as does the Territory Plan's Statement of Strategic Aims and Directions, to the importance of maintaining Canberra's 'garden city' character. However, when confronted with Section 42 and Block 15 Griffith, the Authority's staff have totally failed to recognise that geographically and engineering-wise it is district open space that is protected on all four sides by local streets thereby being protected against adverse environmental impacts emanating from adjoining residential areas.

Section 42 is a classic 'garden city' design based on principles laid down by Sir John Sulman and the Capital Advisory Committee in the early 1920's; adhered to by the Federal Capital Commission in the '30's; the Department of Interior in the '40's and '50's; and the NCDC during the final three decades of Commonwealth administration in its planning of neighbourhoods and public open space ...

Andrew Fagan, in the Brumbies first rezoning application, placed a lot of

⁸¹ Powell, A J., Submission, 10 December 2011, pp. 4-5

stress on the importance of the ambience of Griffith's Section 42 treed open spaces and its proximity to Manuka's restaurants and shopping facilities that greatly assist the Club in attracting elite footballers from outside the ACT.⁸²

3.79 At the public hearing on 25 November 2011 Mr Powell spoke about the heritage aspects of a stand of trees separating the Oval and Block 15.⁸³

3.80 Similar comments about these trees were made by Dr Dianne Firth, Acting Chair, ACT Heritage Council, at the public hearing on 13 December 2011:

We have responded to the proposed rezoning with a statement that it was acceptable provided that a condition was appended to any approval for this lease variation which would require the retention of trees on the common boundary, providing sufficient distance from these trees during planning and development to allow their continued good health and replacing these trees when they reach the end of their lifespan.

The reason for that variation was that in the heritage register the feature intrinsic to the heritage significance of the oval is that its historical landscape setting, including the perimeter ring of mature deciduous plantings, forms an immediate and unimpeded aesthetic backdrop to the oval. So our concern was the visual effect of that boundary.

Ms Porter (Chair): With regard to the trees?

Dr Firth: With regard to the trees; so when you actually look at the assessment process, and why the oval reached the level of high significance to go on to the register, there were four key areas. You only need one to reach the threshold for registration, but we found four. One was that this oval, which is adjacent to the site that we are talking about, exhibits outstanding design and aesthetic qualities valued by the community or a cultural group. We have gone through and we have the evidence supporting that.

The second is that it is highly valued by the community or a cultural

⁸² Powell, A J., Submission, 10 December 2011, pp. 4-5.

⁸³ Transcript of Evidence, November 2011, p. 51. See also Exhibit 2.

group for reasons of strong or special religious, spiritual, cultural, education or social associations. Its associations tie in very strongly with the whole development of Canberra and what we are calling now the Griffin legacy, but it is that historic development of the north of Canberra.

The third point is that it is a rare or unique example of its kind and it is rare or unique in its comparative intactness. This is where part of our letter of December 2010 came from; we do not want anything that will remove that integrity. In terms of enabling development to occur, yes, but do not lose the values that keep the oval at this level of significance.

The fourth reason for registering it is that it has strong or special associations with person/group/event/development or cultural phase of our local or national history, and it reaches a high level on that as well. So we have a very special place here.

Our registration was for the Oval, but I think you have heard this morning how it is not just a one-block section; we have got two blocks on our section. It is actually a larger place that fits within something that has been identified within the territory plan, that was identified, prior to that, under previous legislation, and we are now looking at changes that perhaps are not considered within the broader condition.

I would also like to say that we have currently started the assessment on the registration for Telopea Park and Manuka Oval. You cannot really look at this without going back to block 15 and our oval that we have registered. We are dealing with blocks and sections in bits rather than really understanding the purpose of what has been pointed out as this drainage system, which was understood by Griffin without understanding the site, by looking at contours. We have Sullivan's Creek, we have the drainage line that comes through Glebe Park and we have this one that came off Red Hill—main drainage lines.

Griffin incorporated these within the city plan and then later, through the Federal Capital Advisory Committee, the Federal Capital Commission and then the National Capital Development Commission, all of these planning bodies developed the city realising where we had issues to do with drainage and accessibility. It is built there into the Territory Plan.

And here we are going through looking at variations to the Territory Plan that are somehow losing the objective or the purpose of why we have these green spaces.

...

Mr Coe: At an earlier hearing, we saw a photo, which was submitted as an exhibit, I think by Mr Powell, which showed the vista of oval No 1 with the tree line that you are talking about. If those trees were simply in the foreground and then behind those trees you had a three-storey building, does that impact the heritage value or—

Dr Firth: So long as you could not see the buildings.

Mr Coe: Right. So, if the building is visible in the background as opposed to simply retaining the trees in the foreground that would be a significant issue?

Dr Firth: Yes.⁸⁴

- 3.81 The Committee notes comments made in submissions and at public hearings about the heritage aspects of Section 42 and how Block 15 is viewed as being integral to this.

Flooding

- 3.82 Flooding has been a feature of Section 42 throughout Canberra's history. Mr Kevin Gill, who had grown up in the area, stated his concerns:

.. nor do we believe that adequate attention has been given to the flood control issue. My father was the street cleaner at the Manuka shops and we have experienced many a roaring flood down through the storm water system over at Griffith Oval and down to Endeavour House, which has been flooded many times. That is why they have built the mounds separating the two Griffith ovals.

If you go back to the 60s and 70s, they had to redesign streets and drop

⁸⁴ Transcript of Evidence, 13 December 2011, p. 98.

them lower in Red Hill because of some massive floods that happened in exceptional downpours. We think this is a big problem area. Once you seal, pave, whatever, and build townhouses there that is going to exacerbate the problem. It is an engineering solution but we do not think enough time and energy has been put into that.⁸⁵

3.83 Flooding was considered in the Brumbies' Planning Report and in ACTPLA's Consultation Report but did not appear to allay the concerns of local residents, who reported having witnessed serious floods. Evidence that the area is prone to flooding is found in the warning signs on Section 42 and the creation of a large embankment at the northern end of Section 42.

3.84 GNCA representatives expressed concerns:

Mr Coe: Cardno Young has undertaken a flood study report, which is included in the submission put forward by the Brumbies. Do you have doubts about the validity or the accuracy of that information?

Dr Denham: I would like to comment on that. It is a very superficial report, for several reasons. The most important one is that it does not provide the input function of what the rainfall is going to be. When you model for flood, you have got to have how much rain is going to fall over what period of time in the catchment. And then the model flows from that, with topography. They do not say what they have used for that in the modelling to get that. So you do not know how they have done it. It does not relate to any climate change considerations and, as you know, with the world getting warmer, there is more water vapour in the atmosphere. The rainfall is going to increase and the likelihood of extreme events is going to go the same way. What we recommend is that someone with a bit more expertise than what appears to be in that report have another look at it, because it is just so superficial now.

The final one, as Margaret [Fanning] said, is that the runoff areas are now built on more than they were when the last one was done. While we are on that, Wells Gardens is also a flood channel down there. And that is

⁸⁵ Transcript of Evidence, 4 November 2011, p. 30.

why it has not been built on. If you go down to the Brumbies, there is that creek which divides the heritage bit from the other one. They were pretty smart, these people who designed the early characteristics of the city.

Ms Fanning: One further point on the flood potential, I do not think the Cardno Young analysis really takes properly into account the impact of the excavation for a basement car park either. They seem to be looking mainly at where the building should be sited and the way in which the building might be constructed to withstand flood rather than the impact on other areas of a new building. There are two sets of considerations there.⁸⁶

3.85 The Committee views the issue of flooding as being a very serious one. The existing buildings on Section 42, Block 15 appeared free from danger but the Committee was not convinced about any buildings that may be constructed closer to the existing storm water drain.

3.86 Dr Dianne Firth, Acting President of the ACT Heritage Council, explained the impact that removing existing trees may have on the water table and ground recharge system:

Mr Coe: From your understanding of the proposal, would the height of the building exceed the height of those trees?

Dr Firth: No. But what is of concern to us is the excavation for the car park, because that has serious implications for groundwater recharge. It changes water direction and it would need a statement of heritage effect to have reasonable confidence that it would not be detrimental to those trees.⁸⁷

...

Ms Le Couteur: Would underground parking be an issue throughout the site or just close to the boundary trees?

Dr Firth: Underground excavations on alluvial soil and on a main

⁸⁶ Transcript of Evidence, 13 December 2011, p. 90.

⁸⁷ Transcript of Evidence, 13 December 2011, p. 98.

drainage line are absolutely silly. We have got issues with Coles, Manuka, further down. It has taken groundwater out. It exacerbated the deterioration of the trees at Manuka oval during the drought period.⁸⁸

Traffic

3.87 As with just about any new development proposal, one of the issues of concern was the impact on road traffic. For example, Mr Kevin Gill from ISCCC expressed concerns:

The thing that we particularly wanted to talk about was the impact of traffic in the area. That Captain Cook [Crescent] /La Perouse [Street] border is already significant. Austin Street is a little connector. We do not think that has been looked at adequately, nor do we believe that adequate attention has been given to the flood control issue.⁸⁹

3.88 At the hearing on 28 October 2011, Brumbies' representative Mr Tony Adams said the Brumbies' commissioned study suggested increases in traffic would be acceptable and well within bounds of what might be expected 'on those roads'. He added:

We would not be here today if they considered that the traffic was unacceptable. We defer to the relevant government agencies on all of those questions, and they deemed it to be acceptable. It will be re-examined when the development application comes through, but, on the face of it, it appears to be not an issue. It was raised by a lot of people. It is always a concern, and it is a very legitimate concern. But the traffic people in Roads ACT considered it to be fine.⁹⁰

3.89 The Committee notes comments made in various submissions about possible increases in traffic that could result from rezoning, but has not found evidence to suggest traffic would be any greater than when the membership of the Canberra South Blowing Club was at its peak. The Committee notes comments made by

⁸⁸ Transcript of Evidence, 13 December 2011, p. 105

⁸⁹ Transcript of Evidence, 4 November 2011, pp. 20-30.

⁹⁰ Transcript of Evidence, 28 October 2011, p.14.

Andrew Fagan, Brumbies CEO at the public hearing held on 28 October 2011:

I think it is worth noting one thing just in response to the point about there not being much happening now. The Brumbies organisation employs close to 40 staff. We have close to 40 players in addition to that. So there are 80 individuals working for us on any given day. In addition to that, we run an academy program with another 40 people who have afternoon programs with us. We have foundation members who use our gym in the morning, which is probably another 20 to 30 individuals. We previously did all of that on the site where we also had an operational bowling club with 100 to 120 members, and a licensed club that operated with a restaurant. So in terms of the traffic and the people that were accessing that site over the last 15 years—I am not a traffic expert and will defer to those guys—we are not going from nothing. There is actually a pretty solid base.⁹¹

Land swap

3.90 The Committee asked the GNCA if it had considered the idea of a land swap. Ms Margaret Fanning, then President of GNCA said:

We have thought about the possibility of a land swap ourselves. The area that occurred to us is a block at Manuka which is zoned as a community facilities zone, which is where the Manuka occasional childcare centre is.⁹²

... Currently that has a childcare centre on it. And the rest of that block is not being utilised, except for some parking. That is right next to the Manuka group centre. I imagine that, at some stage, there would be pressure to redevelop that for commercial purposes. So it would seem to make sense to swap the community facility zone land there to block 15 and for the CZ6 zone to go down there. And it may be in the course of that its purpose is broadened for other purposes as well.

If that could be done and it would be open to the government to offer the

⁹¹ Transcript of Evidence, 28 October 2011, p. 15.

⁹² Transcript of Evidence, 13 December 2011, p. 88.

Brumbies the lease on that, that seems to us to be a win-win situation for everyone. I think in the long term that would be a better location for the childcare centre. Where that zone is down at Manuka is an appropriate site for commercial development. If the government see it as appropriate for the Brumbies to benefit from that, I imagine there would be significant potential benefits. We would certainly support serious thought being given to this.

I might say that we have not consulted the childcare people, but I would have thought Block 15 would be a very good place for a childcare centre, and there may be room also for something else to be on block 15, which would be consistent with that sort of community facility use. And the area that is subject to flooding could be kept as recreational area. So it would be a mixed use but one that would be of benefit to the community generally and one that would be appropriate to the site, the site constraints and the residential area around it.⁹³

- 3.91 The Committee notes that the GNCA had not made any approaches to the child care centre in Manuka to assess if there was any interest in the land swap idea. However, the Committee notes that the Brumbies' Planning Report made reference to the site being suitable as a child care facility.⁹⁴

⁹³ Transcript of Evidence, 13 December 2011, pp. 89-90.

⁹⁴ CB Richard Ellis, *Brumbies Rugby draft variation to the Territory Plan of Block 15, Section 42 Griffith*. January 2011, p. 36.

4 CONCLUSIONS AND RECOMMENDATIONS

Rezoning

- 4.1 Issues raised in submissions to the Inquiry and in evidence taken at public hearings can be categorised broadly as falling into three groups:
- those who support the residential development of Section 42, Block 15 Griffith along the lines set out in the Brumbies Rugby Club's Planning Report, arguing residential development will enliven the Manuka / Griffith area and provide an improved mix of housing options in Griffith;
 - those who oppose development of Section 42, Block 15 Griffith, be it either residential under the proposed RZ4 zoning or commercial under the existing CZ6 zoning; and
 - those who question the process of planning and/or the appropriateness of rezoning any space where the land has originally been given to community or sporting groups for specific purposes.
- 4.2 The Committee notes that the Brumbies' stated intention is to move their headquarters and training facility to a new location⁹⁵ and that, as the owners of Section 42, Block 15, the Club has the ability to redevelop Block 15 as it sees fit whether the land is rezoned or not. If the land is not rezoned from CZ6 to RZ4, the Brumbies have the option of developing a hotel on the site and have in the past year made an application to do this. The Committee notes that this application is in abeyance due to variation No. 307 having 'interim effect'. The application to build a hotel may proceed if the Assembly disallows any relevant variation tabled by the Minister.
- 4.3 During public hearings the Committee asked witnesses who oppose redevelopment to suggest alternative uses. The GNCA and others expressed the

⁹⁵ Confirmed in media announcements on 31 January 2012.

view that a range of community uses were possible. In the end there was no single community view as to how the site should best be used or what one type of development may best suit the site.

- 4.4 The Committee is mindful of how the Canberra's inner and oldest suburbs are regarded by residents and those interested in heritage aspects of Walter Burley Griffin's original plans for areas such as Griffith and Blandfordia 5.
- 4.5 Related to this is a community perception of ownership. Even though Block 15 is privately owned, the nature of the site being adjacent public open space together with its bowling greens, which at one point were used by the community, result in a sense of the site being part of the public realm.
- 4.6 However, the Committee is also mindful that much of Section 42, Block 15 has been under-utilised for several years. The Committee notes that the submissions received for the Inquiry did not make a strong case for the land being turned into public open space. Moreover, the ACT Government has indicated that at this time it has no intention of purchasing any land in the ACT for such purposes.⁹⁶
- 4.7 A number of submissions and witnesses referred to the need to consider the impact any development may have on the adjoining heritage listed Griffith Oval (Section 42, Block 17) and the neighbouring heritage area of Blandfordia 5. For example, the stands of trees and scrubs separating Block 15 and Block 17 were seen as integral to the heritage values associated with Block 17, providing a wall of green. The Committee recognises this as an important heritage issue.
- 4.8 The Committee is of the view that the existing trees on all perimeters of Section 42, Block 15 are important from both a heritage perspective and an environmental perspective, in particular, the ground water recharge system which is linked to the trees and their root systems.
- 4.9 Evidence received during the Committee's Inquiry, including photos and DVDs, demonstrate that flooding has been a feature of the area. The Committee considers the flooding potential of the area to be an important factor in any consideration of how the site is used. Existing flood studies commissioned by the Brumbies indicate that a 1 in 100 year flood would see water enter the

⁹⁶ ACTPLA, *Report on Consultation*, August 2011, p. 16.

existing bowling club building. The regularity of flooding in the area, the scale of a 1 in 100 year flood, and predictions of more extreme weather events have made flooding an important issue for the Committee in reaching its conclusions about rezoning.

- 4.10 The Committee concludes that there is no option to ‘do nothing’. The existing buildings, car parks and surrounds have diminishing aesthetic appeal. As the owner of Section 42, Block 15 the Brumbies Rugby Club has made clear that it intends to redevelop or sell the site and so in reality the zoning of the land will not stop redevelopment.
- 4.11 The Committee is firmly of the view that residential redevelopment of Section 42, Block 15 can only proceed if certain conditions are met which relate to heritage and environmental concerns identified during the Inquiry. The mechanism for achieving this outcome is a precinct code to be tabled in the Assembly by the Minister with his variation to the Territory Plan.

RECOMMENDATION 1

The Committee recommends that Section 42, Block 15 be rezoned from CZ6 leisure and accommodation to RZ4 medium density residential zone on condition that it includes a precinct code that ensures each of the following:

(a) no building or other part of any development be closer than 35 meters to the existing stormwater easement, thereby ensuring a band of the public realm, comprising both public open space and private land, continues from Murray Crescent to La Perouse Street, Griffith;

(b) a new bicycle path be constructed in this area of public realm to make the area more accessible to the general public and provide an alternative transport route to Manuka and beyond to Telopea Park;

(c) the well worn track which starts in Austin Street near Wells Gardens and proceeds towards Manuka be landscaped and improved to make the area more accessible to the general public. This should include a cycle path or wider paved area for the enjoyment of cyclists and pedestrians and some seating that allows people to sit and enjoy the surrounding area;

(d) appropriate up to date flood warning signs be placed along pathways and access points to Section 42 Griffith;

(e) any development or associated construction works not encroach on land lying under existing stands of trees on the perimeter of Block 15 and so by definition their respective root systems. At a minimum all perimeter trees are to be retained and all regulated trees are to be retained.

(f) any residential apartment development not have more than one level of basement car-parking.

(g) any residential development adhere to the current principle of 'universal design'.

RECOMMENDATION 2

The Committee recommends that any redevelopment of Section 42, Block 15 Griffith be conditional on comprehensive flood studies being undertaken and made publicly available; the studies to model not only impacts on Section 42 but also flooding impacts on surrounding areas and those towards Canberra Avenue pre and post development, recognising that any use of infill on Block 15 may impact on flooding in nearby areas.

RECOMMENDATION 3

The Committee recommends that should, Section 42, Block 15, Griffith not be rezoned, any redevelopment, such as the hotel already proposed, comply with the conditions (a) to (g) in Recommendation 1.

Deconcessionalisation

4.12 The Committee accepts that the deconcessionalisation of the lease for Section 42, Block 15, Griffith is a separate process to that to vary the Territory Plan and reiterates (as stated in paragraph 3.22) that it was disappointed to find that the deconcessionalisation process was progressing without ACTPLA providing information to the Committee.

4.13 The Committee is of the view that without increased transparency and openness in such processes, the community, the Committee and the Assembly will find it difficult to have confidence in the planning system. The Committee believes that any lack of trust in planning will impact on other public processes and

institutions. The Committee concludes that the deconcessionalisation process needs reform.

RECOMMENDATION 4

The Committee recommends that Australian Capital Territory Planning and Land Authority (ACTPLA) takes urgent steps to ensure there is better public notification and transparency for all land deconcessionalisation processes.

RECOMMENDATION 5

The Committee recommends that Australian Capital Territory Planning and Land Authority (ACTPLA) widely publishes its policy on deconcessionalisation to ensure understanding and comprehension of deconcessionalisation in the community. This should include a range of communication channels, including the Internet.

RECOMMENDATION 6

The Committee recommends that Australian Capital Territory Planning and Land Authority (ACTPLA) publishes a Factsheet on deconcessionalisation on its website.

Mary Porter AM MLA

Chair

21 February 2012

Appendix A List of submissions to the inquiry ⁹⁷

1	Mr David Kibbey AM JP	Private citizen
2	Mr Stephen Brown	Private citizen
3	Mr John & Mrs Suzanne Jedryk	Private citizen
4	Mr Ernst Willheim	Private citizen
5	Mr Ian & Mrs Sylvia McEwan	Private citizen
6	Ms Nancy-Louise Scherger McCullough	Private citizen
7	Mr Peter Martin	Private citizen
8	Mr Rick Reeks	Private citizen
9	Mr Cameron Darrow	Private citizen
10	Mr Shane Hobbs	Private citizen
11	Mr Kit Morgan	Private citizen
12	Mr Puspanasanta Nanayakkara	Private citizen
13	Ms Millicent Morgan	Private citizen
16	Mr Peter Norton	Private citizen
19	Mr Roger Philips	Private citizen
20	Mr John Minns	Private citizen
21	Kate O'Leary	Private citizen

⁹⁷ Authors of documents numbered 14, 15, 17, 18, 24, 27, 31, 43, 52, 53, 60, 66, 71, 75, 77 and 80 did not comply with the Assembly's Guidelines for submissions (see document *Making a submission or appearing before a committee of the Legislative Assembly for the Australian Capital Territory*) and so were not formally received as evidence and authorised for publication.

22	Mr Norman Honey	Private citizen
23	Mr John Hillier	Private citizen
25	Mr David Miller	Private citizen
26	Mr Doug Collins	Private citizen
28	Mr Brent Knevett	Private citizen
29	Mr Owen Brown	President , Easts Rugby Club
30	Ms Kate Waldex	Private citizen
32	Mr Nick McDonald Crowley	Private citizen
33	Mr Matt Sutherland	Private citizen
34	Mr William David Holland	Private citizen
35	Mr Clinton Hutchinson	Partner / Managing Director, Zoo Advertising
36	Mr Steve Moseley	Private citizen
37	Mr Olivier Bellon	Private citizen
38	Mr Lee Pearce	Private citizen
39	Mr Chris Ramirez	Private citizen
40	Mr Warwick Dunstone	Private citizen
41	Mr Scott Benness	Private citizen
42	Mr Nick Xirakis	Private citizen
44	Ms Genette Purnell	Private citizen
45	Mr Ottmar Weiss	Private citizen

46	Ms Elke Mackenzie	Private citizen
47	Mr Simon Southwell	Private citizen
48	Mr Jerry Fitzgibbons	Private citizen
49	Mr Robert Morton	Private citizen
50	Mark Thompson	Private citizen
51	Mr Donovan de Ligt	Private citizen
54	Mr David Shearer	Private citizen
55	Mr Michael Kennedy	Private citizen
56	Mr Bob Brown	Private citizen
57	Ms Sandra Milward	Private citizen
58	Ms Raewyn Miners	Private citizen
59	Mr Doug Edwards	Private citizen
61	Ms Andrea Kopastsy	Private citizen
62	Mr John Runko	Private citizen
63	Ms Melissa Ganter	Private citizen
64	Ms Willow Condi	Private citizen
65	Mr Paul Powderly	State Chief Executive, Colliers International
67	Mr Ian Bowyer	Private citizen
68	Mr James Service	Private citizen
69	Mr Arthur & Mrs Margaret Townsend	Private citizens

70	Mr Erik Adriaanse	Private citizen
72	Ms Jenny Yang	Private citizen
73	Mr Brian Evans	Private citizen
74	Mr Chris Millman	Director, Cox Architecture
76	Mr Nathan Grainger	Private citizen
78	Dr David Denham	Private citizen
79	Mr Ian Smith	Private citizen
81	Mr Leo & Mrs Alice Dobes	Private citizens
82	Ms Beverley Thomson	Private citizen
83	Mr Michael Thomson	Private citizen
84	Mr Geoff Andrew	Private citizen
85	Mr Andrew Fagan	Chief Executive Officer, Brumbies Rugby Club
86	Ms Naralle Ford	Private citizen
87	Mr Jerry & Mrs Elizabeth Silvey	Private citizens
88	Mr Tony Powell	Private citizen
89	Mr Cedric Mims	Private citizen
90	Mr Dario and Mrs Marguerite Castello	Private citizens
91	Mr Alex Proudfoot	Private citizen
92	Ms Margaret Fanning	President, Griffith/Narrabundah Community Association

93	Mr Gary Kent	Acting Chair, Inner South Canberra Community Council
94	Mr Matthew and Mrs Anna Doogan	Private citizens
95	Ms Elke McKenzie	Private citizen

Appendix B List of exhibits

Exhibit 1	Aerial view of Section 42, Block 15, Griffith.
Exhibit 2	View from Griffith Oval, looking toward Section 42, Block 15.
Exhibit 3	View of tree-lined path along eastern side of Section 42, Block 15.
Exhibit 4	Griffin's 1913: Canberra Federal Capital of Australia Preliminary Plan.
Exhibit 5	FCAC 1925 Plan of Canberra
Exhibit 6	Aerial black & white photograph of Canberra, circa 1930.
Exhibit 7	Aerial colour photograph of Section 42, Griffith, circa 2008.
Exhibit 8	Aerial colour photograph of Griffin Trail, circa 2008.
Exhibit 9	Sketch of proposed Brumbies HQ
Exhibit 10	Colour photograph of residential apartments with below ground car parking
Exhibit 11	Colour photograph of residential apartments with ground level car parking
Exhibit 12	'8000 new units in pipeline for ACT', <i>The Canberra Times</i> , 19 November 2011, page 1.
Exhibit 13	Letter dated 25 November 2011 from the Minister for Sustainable Development, Mr Simon Corbell MLA to the Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, Ms Mary Porter AM MLA: Brumbies Performance Fee Agreements and other matters.

Exhibit 14	Email dated 12 December 2011 from Dr David Denham, private citizen to the Standing Committee on Planning, Public Works and Territory and Municipal Services and attachments
Exhibit 15	Photographs of Section 42 Griffith affected by rain provided by Ms Margaret Fanning, President, Griffith/Narrabundah Community Association
Exhibit 16	Map of Canberra provided by Ms Margaret Fanning, President, Griffith/Narrabundah Community Association
Exhibit 16	Letter dated 13 December 2011 from the Minister for the Environment and Sustainable Development, Mr Simon Corbell MLA to the Chair, Standing Committee on Planning, Public Works and Territory and Municipal Services, Ms Mary Porter AM MLA: 'Concessional Status – Block 14 Section 42 Griffith – Summary
Exhibit 17	Letter dated 17 February 2012 from the Director General, Environment and Sustainable Development Directorate, Mr David Papps: Draft variation 307 (DV307) Griffith section 42 block 15 (Austin Street) – proposed amendment to Part C (5) multi unit housing development code.
Exhibit 18	DVD dated 11 January 2011 showing Section 42 Griffith affected by heavy rain. Provided by Ms Marguerite Castello
Exhibit 19	DVD dated 11 December 2011 showing Section 42 Griffith affected by heavy rain. Provided by Ms Elke McKenzie

Appendix C List of organisations invited to make submissions to the Inquiry

1. Tuggeranong Community Council
2. Weston Creek Community Council
3. Woden Valley Community Council
4. Belconnen Community Council
5. North Canberra Community Council
6. Gungahlin Community Council
7. Inner South Community Council
8. Griffith/Narrabundah Community Association Inc.
9. Brumbies Football Club
10. The Planning Institute
11. Australian Institute of Architects (ACT Chapter)
12. The Property Council
13. The Heritage Council
14. Pitch and Putt Bowling Club

Appendix D List of witnesses appearing at hearings

Friday, 28 October 2011 – Public hearing

Mr Tony Adams
Senior Director, Town Planning
CB Richard Ellis Pty Ltd

Mr Andrew Fagan
Chief Executive Officer
Brumbies Rugby Club

Friday, 4 November 2011 – Public hearing

Dr David Denham
Member
Inner South Canberra Community Council

Mr Kevin Gill
President
Inner South Canberra Community Council

Mr Viv Straw
President
Planning Institute of Australia ACT

Friday, 25 November 2011 – Public hearing

Mr Garrick Calnan
Manager
Territory Plan Review and
Implementation, Environment and Sustainable Development Directorate

Mr Simon Corbell MLA
Attorney-General
Minister for Police and Emergency Services and
Minister for the Environment and Sustainable Development

Mr Ben Ponton
Acting Deputy Director-General
Planning Policy, Environment and Sustainable Development Directorate

Mr Tony Powell
Private citizen

Friday, 13 December 2011 – Public hearing

Ms Marguerite Castello
Secretary
Griffith/Narrabundah Community Association

Dr David Denham
Vice-President
Griffith/Narrabundah Community Association

Ms Margaret Fanning
President
Griffith/Narrabundah Community Association

Dr Dianne Firth
Acting Chair
ACT Heritage Council

Monday, 30 January 2012 – In camera briefing (Evidence published on 23 February 2012)

Mr Ben Ponton
Acting Deputy Director-General
Planning Policy, Environment and Sustainable Development Directorate

Appendix E Examples of creating open space with increases in the urban density

- The **High Line in New York** is an outstanding example of vision and thinking outside the box. It reclaims disused private space (an old rail line to warehouses on the Hudson River) as public open space for the Manhattan community;⁹⁸
- London boasts parks such as **Mile End Park** which has a land bridge that joins two parks into one large park. From the Park there is no hint of the nearby noisy, urban environment and vice versa.⁹⁹ The land bridge concept is already used in Canberra near Parliament House.
- London also boasts a growing number of **roof gardens**¹⁰⁰ and innovative urban gardens such **Vauxhall Sky Garden**¹⁰¹ which is adjacent the redevelopment of Nine Elms – an industrial urban space becoming the home of a new American Embassy, a multitude of apartments and new parkland to give existing residents more open space and ready access to the Thames River.¹⁰²
- Sydney has the new **Central Park** development, designed by leading world architects and designers (Norman Foster and Jean Nouvel). Across six hectares of inner Sydney, Central Park is a high quality, sustainable and mixed use development comprising apartments, offices, shops, restaurants and open space.¹⁰³

⁹⁸ Details of the High Line, including photographs and videos, can be found at: www.thehighline.org/

⁹⁹ For information on Mile End Park, see: <http://www.lja.uk.com/index.php?page=516>

¹⁰⁰ An example rooftop garden is above the Queen Elizabeth Hall at Southbank Centre in the Central London. <http://www.edenproject.com/blog/index.php/2011/04/eden-gardeners-work-with-homeless-to-complete-architects-grand-vision-for-queen-elizabeth-hall/>

¹⁰¹ See website for The Sky Garden, Vauxhall: <http://openbuildings.com/buildings/vauxhall-sky-garden-tower-profile-1011#!buildings-media/8>

¹⁰² The Nine Elms development is in the Borough of Wandsworth. See: http://www.wandsworth.gov.uk/info/200079/regeneration/371/nine_elms

¹⁰³ For information on Central Park, see: <http://www.frasersbroadway.com.au/broadway/po.htm>

Appendix F ACTPLA – Response to Committee’s Question 5 dated 24 January 2012

This matter was dealt with in the report on consultation in relation to housing choice as follows:

3.2.3.8 Housing choice

It is asserted in the comments that Griffith already has a higher range of housing choice in the form of units, flats and the like than most Canberra suburbs. One submission indicates that town houses and unit comprise more than half (51%) of the housing stock, while freestanding houses and duplexes only account for 49%.

The comments raise concerns with the ‘concept’ of possible future residential development of the site for some 150 apartments, contained in the planning report. It is questioned whether such multi units are suitable housing for the elderly or for families given that they are likely to be mostly one and two bedroom units and that they will most likely be three storey.

Some submissions suggest that families prefer single dwellings and the elderly require single storey homes. Other submissions gave examples of the type of housing they consider appropriate for families and the ageing. Lastly, some submissions strongly objected to any notion of people ageing in anything other than their family home.

Response

ACTPLA indicated in DV307 that it supported the proposal because “The proposal will increase housing choice in the Griffith/Forrest area without directly affecting existing single dwelling housing.”

The comments have highlighted a key housing issue, there is no ‘one size fits all’ for housing for families, for the ageing or for everyone else in between. In this regard, in planning for housing the emphasis is on increasing housing diversity within each suburb to accommodate the needs of those wishing to change their dwelling type, be it down-sizing, up-sizing or moving location.

The inner south does have a range of housing types including units and flats. However, due to its proximity to employment, commercial centres and the city, the demand is strong. This is not unexpected demand as the city evolves and land use planning responds logically to it. This is evidenced by the high prices paid for flats and apartments in the inner south.

Notwithstanding the current supply of multi units, amongst Australian cities, suburbs with the same proximity to the central business district (CBD) as Griffith possess housing stocks of a greater proportion of medium to high density dwellings. This even includes Perth, which has a lower population density than Canberra overall.

Even within Canberra, a number of inner north and south suburbs have a lower single dwelling housing component of the total housing stock than Griffith including: Barton, Kingston, Braddon, Civic, Lyneham, Reid and Turner. Some middle and outer ring locations also have a lower proportion of single dwelling housing than Griffith including Bruce, and the town centres of Greenway, Phillip and Belconnen.

Within each of the suburbs of the inner south there is a need to provide for the ageing of the existing population to achieve the ‘life cycle neighbourhood’ strategies of the Canberra Spatial Plan. It is not sufficient to point to one or two areas of the inner south such as Kingston and assume that these alone provide such opportunities.

In terms of household preferences for single dwellings, market data indicates over the last two decades that there is a substantial market for town houses and apartments and that this has been reflected in dwelling price growth for such existing stock and an increase in new supply this century. Griffith and the subject site are well located to provide these opportunities.

Notwithstanding that the planning report included a ‘concept’ for future development of the site, the actual development on the land will be determined via a development application in accordance with the applicable Territory Plan codes. In this regard, Part C (5) of the multi unit housing development code contains provisions to regulate the range, extent and nature of the units. In particular the following provisions are relevant to multi units in the RZ4 medium density residential zone:

<p>R202</p> <p>Residential developments contain a combination of dwelling types, including studio or 1-bedroom dwellings, 2-bedroom dwellings, and dwellings with 3+ bedrooms.</p>	<p>C202</p> <p>Buildings contain a diversity of apartment types within developments to cater for different household requirements.</p>
<p>R205</p> <p>10% of the dwellings of any multi unit housing development consisting of 10 or more dwellings are designed to meet the relevant Australian Standard for Adaptable Housing and any relevant considerations in the Access and Mobility General Code.</p>	<p>C205</p> <p>Residential development is easily adaptable to suit the needs of people with disabilities and to meet the needs of Canberra’s ageing population.</p>

Within part C(5) of the code Rule R202 and criterion C202 stipulate requirements for family friendly dwellings, while rule R205 and criterion C205 require 10% of multi unit housing to be

suitable for people with disabilities and the aged. However, this part of the code only applies to the suburbs listed in the pre-amble and does not refer to Griffith. In order to ensure that these provisions apply to the future development of the site, it is proposed to amend DV307 to include an amendment to the pre-amble of Part C (5) of the multi unit housing development code as follows:

This Part of the Code applies to development applications for multi unit housing in the RZ4 – Medium Density Residential and RZ5 – High Density Residential Zones as they apply in Belconnen, Bruce, Hawker, Narrabundah, Woden District and Tuggeranong District and the RZ4 medium density residential zoned areas within Griffith.

It should be noted that the residential codes are currently under review and are reflected in draft variation DV306. In this regard, DV306 applies the above provisions for dwelling diversity in the RZ4 medium density residential zones without specifically listing their suburb or locations. DV306 further expands on the requirements for adaptable dwellings in the current multi unit housing development code.

Appendix G Notifiable Instrument – Planning and Development (Consideration of Public Interest) Decision 2012 (No. 1)

Planning and Development (Consideration of Public Interest) Decision 2012 (No 1)*

Notifiable instrument NI2012 –22

made under the

Planning and Development Act 2007, section 261 (No decision on application unless consideration in public interest)

1. Name of Instrument

This instrument is the *Planning and Development (Consideration of Public Interest) Decision 2012 (No 1)*.

2. Commencement

This instrument commences on the day after it is notified.

3. The Decision

Pursuant to section 261 of the *Planning and Development Act 2007* I decide that it is in the public interest to consider Development Application No 201120448 applying to Block 15 Section 42 Griffith made on 12 September 2011.

4. Background

Details of the relevant development application and the reasons for the decision are attached.

Andrew Barr MLA
A/g Minister for the Environment and Sustainable Development
6 January 2012

*Name amended under Legislation Act, s 60

Background

The development application

The development application that is the subject of this instrument is an application for approval of a lease variation to remove the concessional status of the Crown lease Volume 1552 Folio 84 in respect of land that is Block 15 Section 42 Division of Griffith.

Notification of Planning and Land Authority

The Planning and Land Authority has been notified of the decision pursuant to s261(3) of the Planning and Development Act.

Public interest test

Section 261(1) of the Act applies to development applications for approval of a lease variation to remove the concessional status of a lease (ie to deconcessionalise a lease). Section 261(1) prohibits the Planning and Land Authority or the Minister from deciding such an application unless the Minister first decides whether it is in the public interest to consider the application.

In deciding whether it is in the public interest to consider such an application, the Minister must consider the matters set out in s261(2) of the Act. The factors required to be considered are:

- a. Whether the Territory wishes to continue to monitor the use and operation of the lease by requiring consent before the lease is dealt with (s261(2)(a) of the Act);*
- b. Whether approving the application would cause any disadvantage to the community taking into account potential uses of the leased land that are consistent with the territory plan, whether or not those uses are authorised by the lease (s261(2)(b));*
- c. Whether the application to vary the lease to make it a market value lease is, or is likely to be, part of a larger development and, if so, what that development will involve (s261(2)(c));*
- d. Whether the Territory should buy back, or otherwise acquire, the lease (s261(2)(d));*
- e. Whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by retaining the concessional status of the lease (s261(2)(e)).*

The Public Interest Test – matters considered in this case

- a. This application does not seek to vary the Crown lease to add additional uses or to change the existing use.

If approved, a condition of the application will require the lessee to pay the “payout amount” as worked out under S263 of the Act. The application will be finalised by surrender of the existing lease and regrant of a new lease which will not include rental provisions or any provisions requiring the Territory’s consent to deal in the lease. If the concession is removed, the Territory’s interest in the land can be addressed through the provisions of the Territory Plan and, therefore, there is no justification to include a restriction on transfer in the lease.

- b. The application does not seek to vary the current authorised use of the Crown lease. The deconcessionalisation of the lease does not in itself provide any additional development rights and will not give approval for further development of building(s) on the site.

If an application to vary the Crown lease to add additional uses consistent with the interim effect provisions of draft variation 307 is submitted, it will be publicly notified as required by the Act. Persons who believe they may be affected by the variation will have appeal rights against that application.

If an application for design and siting is submitted concurrently with, or subsequent to, an application to vary the lease consistent with the interim effect provisions of draft variation 307, pre-DA community consultation would be required once the provisions of new Section 20A of the *Planning and Development Act 2007* have commenced.

- c. Draft variation 307 to the Territory Plan has interim effect until 19 August 2012. The application is part of a larger development proposal which has not received support at this time. A recent development application to vary the Crown lease to add commercial accommodation use limited to hotel was refused on 23 August 2011. Hotel is a use permitted in the CZ6 Leisure and Accommodation Zone but prohibited in the RZ4 Medium Density Residential Zone.
- d. It is intended that the site would be redeveloped in the future, particularly noting that draft variation 307 to the territory plan has interim effect. The site could be acquired by the Territory by negotiated purchase or under the *Land Acquisitions Act 1994* either by agreement with the lessee or by a compulsory process. Acquisition of the site can only be for a public purpose. The Territory would be required to compensate the lessee for all lessee owned improvements on the site. It is not anticipated that the Territory would require the site for a public purpose.

As the site is only partially concessional, as explained above, the Territory would also be required to pay full market value for that portion of the site which is not concessional.

- e. This development proposal does not change the existing use of the site. However, it is anticipated that a proposal to redevelop the site would be forthcoming. Therefore, the site will continue to be used as a club and a further development application would be required to change this authorised use. If the concessional status of the lease is retained, the Authority will be required to approve any dealings with the lease. Retaining the concessional status of the lease would also adversely impact upon the lessee's ability to raise collateral.

Social Impact Assessment

In assessing the matters set out in section 261(2), I considered the Social Impact Assessment required under section 139(2)(1) of the Act and submitted in support of the development application.