STANDING COMMITTEE ON LEGISLATION

STRATA TITLES AMENDMENT BILL 2018

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 27 SEPTEMBER 2018

SESSION TWO

Members

Hon Dr Sally Talbot (Chair)
Hon Donna Faragher (substitute member)
Hon Colin de Grussa
Hon Simon O'Brien
Hon Pierre Yang

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Hearing commenced at 11.07 am

Mr SEAN MACFARLANE
Senior Lawyer, Landgate, sworn and examined:

Ms KELLY WHITFIELD
Principal Policy Adviser, Landgate, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you both to take either the oath or affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: Thank you. You will have signed a document entitled "Information for Witnesses". Have you both read and understood that document?

The WITNESSES: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. I do not think you will find this a challenge; could you try to speak in turn, so not over each other. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement in today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you the publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would either of you like to make an opening statement to the committee?

The WITNESSES: No.

[11.10 am]

The CHAIR: You have indicated that you have some documents to circulate.

Mr MACFARLANE: Yes, so these documents are headed "Proposed Part 12 of the Strata Titles Amendment Bill: Standing Committee on Legislation: Response by Landgate Officers to list of questions for hearing with Landgate at 10.45 am on Thursday, 27 September" and they contain our answers to the set of questions that we were emailed prior to this hearing. There are 10 sets.

The CHAIR: That is very useful. Thank you very much for that. From the point of view of the process on our side, you will be aware we have an extraordinarily tight time line and turnaround to get this report back to the Parliament. What we have done, in an attempt to streamline things, is that our initial list of questions was prepared before we had seen your submission. So we have now—this is the royal we—matched your submissions to the questions and we are left with probably half the number of questions that we originally sent you because you have answered about half of them. We thought that we would start by going through—this is, I must stress, before we have seen the document you have just left with us. If I go through the questions that we did not find answers

specifically in your submission, given that they crossed in the post, you might be able to just refer us—for the economies of time, you might be able to say, "Look, everything is in the document that we have just tabled."

Mr MACFARLANE: Yes, and if you wish to ask further questions we are happy to answer them.

The CHAIR: Yes. We have a couple of questions that we have not canvassed with you before. I have only two or three. Other members might have some others as well. Without further ado, we will launch into question 1, which is the first question we asked you, which was the policy intent behind the proposed new part 12.

Mr MACFARLANE: The first strata schemes in Western Australia were constructed over 50 years ago and scheme buildings are ageing and they have many large older buildings that are costing owners substantial amounts in maintenance. Owners are now getting to the point in some of those schemes where they simply cannot afford to maintain those old buildings. So, those owners are actually going to start looking at ways to terminate the scheme and receive a good return for their lot before the building becomes unsafe or run down. As more development actually occurs in a city—and that is what is currently happening here in the Perth metro area—what you see is that viable redevelopment sites become more scarce and, as a result, developers itself start looking at existing strata schemes as potential redevelopment sites.

Based on the experience in other jurisdictions where you have this combination of ageing strata schemes and more pressure for redevelopment sites, what you actually see is that termination and redevelopment of strata schemes become increasingly common. So, the main concern that has driven the reforms for part 12 at least of the bill, was to introduce safeguards for termination and we were particularly concerned with the existing provisions under the act because they actually do not provide adequate protection for owners in those schemes. So, we felt that we wanted to protect the assets held by all strata owners and we proposed in part 12 a set of safeguards that are aimed to do that.

The CHAIR: Could you outline for us the major differences between the existing provisions of the Strata Titles Act 1985 and proposed part 12?

Mr MACFARLANE: The differences are fairly substantial, and the differences go to the fact that part 12 has a very extensive series of steps and processes. We have specified in the submission to the Standing Committee on Legislation—this is the submission that Landgate made on 25 September—those very extensive steps that need to be taken as proposed under part 12. What I wanted to do was to actually look at the current act and the pathways that it has to terminate. Essentially, there are three pathways to terminate. The first pathway is through unanimous resolution. That is set out in two sections—section 30 and section 30A. Section 30 simply provides that a notice would be given to owners of a proposed resolution to terminate the scheme. The strata company calls a meeting and a vote is conducted. If the vote is unanimous, the next step, under section 30, is that a notice is lodged with the registrar. The outcome will be that all of the owners become tenants in common in the parcel, in shares proportional to their unit entitlement. It is a very simple process under section 30. Section 30A of the current act provides a similar process for survey strata schemes. A notice is given, a meeting is called and held, a vote is passed, and a notice is lodged with the Registrar of Titles.

The second pathway that is set out under the current act is section 31. This pathway allows a strata company, an owner or a registered mortgagee of a lot to apply to the District Court for an order terminating the scheme. Section 31 then sets out the type of orders that the District Court can make; for example, the sale of the strata company's property and a discharge of its liabilities, and other orders like that. The District Court can make an order as to payment of costs as it thinks fit. Once

the orders are made, the strata company must immediately lodge a copy of it with the registrar, after which the registrar will make an entry in the relevant plan and on any relevant certificates of title about the termination.

Ms WHITFIELD: Can I just interrupt for a second. One of the key differences between that process and what we have proposed in the legislation is in this process the District Court is given no guidance at all in relation to what things they must consider. Questions of fairness and equity, for example, are not part of what they have to consider, but in our process there is a really extensive list of what SAT must consider before the termination can proceed.

Mr MACFARLANE: The third pathway is section 51. Section 51 can be used where you have a resolution and a vote that was required to be unanimous is not achieved and what you had was a special resolution instead. One of the owners who voted in favour of that special resolution can apply to the District Court for an order deeming that that lower level resolution was actually a unanimous resolution. A similar provision exists for section 51A and that applies to two-lot schemes. That is essentially where a resolution has not been passed, one owner can apply to the District Court for an order declaring that the resolution is unanimous. In that case, section 51 provides that to make the order, the District Court must be satisfied that it is in the best interests of the owners or that the dissenting owner has been unreasonable in refusing to agree to the resolution.

Going back to the essential differences, we have set out in the submission that Landgate provided details of the termination process. I would draw the committee's attention to chapter B which sets out a summary of the proposed unanimous resolution process. I guess the key difference there is that there is a requirement (a) for an outline proposal to be prepared and (b) for the strata company to essentially say, "Yes, we want the proponent to proceed further with that outline proposal", and they do that by way of an ordinary resolution. Once the ordinary resolution is obtained, the proponent then needs to go away and obtain subdivision approval from the Planning Commission. Then the proponent needs to prepare a detailed termination proposal. The bill actually sets out what needs to be put into that detailed proposal, which is called a full proposal.

[11.20 am]

The proponent then submits that full proposal to the strata company, and the strata company serves that full proposal on all owners, registered mortgagees, people with an interest in the lots, and occupiers of those lots and the common property. All owners must be given at least two months before a vote is held on that full proposal. Up to three votes can be held, and the decision must be made within six months. If the vote is insufficient within six months, the proposal comes to an end. In this case, for a unanimous resolution, all owners must vote in favour of the proposal. At that point, if you have a unanimous resolution, the proponent must then obtain an endorsement from the Planning Commission to the subdivision itself, and they can then apply to register the termination with the Registrar of Titles. So we have actually added some additional safeguards and steps in there for unanimous termination.

Chapter D of the submission to the standing committee that Landgate submitted on 25 September sets out a summary of the termination process for a majority vote. The key difference in that process from the one that I have just previously described for the owners' resolution is that there is a review by the State Administrative Tribunal, and there are very extensive things that SAT needs to look at when they are doing the review. In terms of the majority termination process, the bill currently proposes that if it is a scheme of two to four lots, they are not subject to the majority termination process. If it is a scheme of five or more lots, before the proponent can apply to the

State Administrative Tribunal for a review of the proposal, they need to have at least 80 per cent of the lots voting in favour of the full proposal.

The CHAIR: Thank you for that. I wonder if I could now take you to what you have as question 1.8.2. I think you have given us a flavour of the existing section 51. Can you talk about why that provision was introduced and how often it is used currently?

Mr MACFARLANE: In answer to the question about why the provision was introduced, District Court Judge Wisbey in the District Court decision McHattie v Tuscan Investments, and I have included the citation of that in the response to the questions that Landgate has tendered this morning, said —

> It is clear that the Parliament had in mind that in a situation such as this, the court could and should intervene to overcome an impasse between the proprietors.

The case McHattie v Tuscan Investments was an interesting one, in which the District Court actually used section 51 of the Strata Titles Act to order the sale of common property within the strata scheme against the wishes of some of the owners in that strata scheme.

In terms of the second question about how many applications have been made to the District Court specifically for a termination of a strata scheme under section 51, we are not aware of any applications having been made under section 51.

The CHAIR: Question 1.9 asks if you can give examples of where terminations of strata schemes under the existing legislation were not able to proceed because a unanimous resolution was not passed by the proprietors.

Mr MACFARLANE: In the response to the questions that we have tendered this morning—that is, the response by Landgate officers to the list of questions for today's hearing—we have provided an answer under 1.9 that runs through four separate case studies. Would you like me to read each of those case studies out?

The CHAIR: No; I think you have given us the details here. I might just throw to my colleague Hon Donna Faragher.

Hon DONNA FARAGHER: Thank you. Can I go back to your response that Landgate is not aware of any applications being made to terminate a scheme under the current act or the current section. Can I just clarify that; is that correct?

Mr MACFARLANE: Sorry. The answer was there have been no applications to the District Court under section 51. We are aware that there is a case, and, in fact, a decision, where, under section 31, the District Court actually ordered the termination of a strata scheme, against the wishes of the majority of owners by unit entitlement. That case is the Argosy Court case. That was an unusual case. My understanding was that it involved a strata scheme in Exmouth. The strata scheme's lots were actually dongas. Cyclone Vance came through in I think around 2004 and effectively destroyed the dongas. The local government requested that the remnants of the dongas be removed. So what you had was a strata scheme where the concrete pads where the lots were meant to be were left behind. An application was brought by a minority of the owners under section 31 of the Strata Titles Act for an order to terminate, and the District Court did give that order, and the District Court did note that it was a very unusual case.

Hon DONNA FARAGHER: Thank you. My question is perhaps more around section 31 in particular. As I understand it—correct me if I am wrong—under that section, an individual owner can make an application to the court. It does not need to be 80 per cent. It does not need to be 100 per cent. It can be one. Is that correct?

Mr MACFARLANE: That is correct, and one mortgagee can apply as well, or it can be the strata company.

Hon DONNA FARAGHER: You have pointed to one example of it being utilised. I suppose I am keen to understand—I am not sure whether you can answer this or not—if it is already the case that there is an avenue for one owner or mortgagee to make an application to the District Court, why has it not been utilised more? That is my first question. Why do you think that it has not been utilised more readily, and is it because it is too difficult? I suppose I am trying to get an understanding, if there is already a provision there which actually only requires one, and which also does not include other safeguards, as you have indicated, that are put into this bill, why has that not been used all that much?

Mr MACFARLANE: I guess the key issue to remember is that strata schemes have only been in existence in Western Australia since 1966 when the first Strata Titles Act was enacted. I think there are two important issues to consider with termination of schemes. One is how many schemes are actually getting to the end of their life in terms of the owners being able to afford the maintenance costs. As we see more schemes in Western Australia age and become more run-down, the cost to maintain those schemes is just going to increase. This will actually lead to an initial factor, and that is that more owners within the schemes will be seeking ways out of the scheme, and they will be seeking to terminate the scheme to capitalise on the current value of their lot. The other factor—I mentioned this at the start—was that the existence of suitable redevelopment sites across, say, a metro area such as Perth, starts to diminish as more and more development occurs. What we are starting to see in Western Australia is a reduction in the number of viable redevelopment sites, particularly in the Perth metro area, as it becomes more densified. So where you have less redevelopment sites available, developers just start looking at alternatives, and one of the alternatives for them is existing strata schemes. So I guess if you look at those two factors, and those two factors are going to become more common as time progresses, we actually believe that the alternative pathways under sections 31, 51 and 51A of the Strata Titles Act will be pursued over time. I think the experience in other jurisdictions has indicated that terminations become more frequent, they become more requested as you have that ageing stock and as you have a reduction in redevelopment sites that are available.

[11.30 am]

Ms WHITFIELD: Can I just add as well, some of the policy thinking behind why there have not been any applications, or few applications, under section 31 is the expense of the court process. We have attempted to address that by having things go to SAT, which is a much cheaper venue. The guidance provided under section 31 to the District Court really does not provide the District Court with any guidance as to what they should consider. Anybody who wants to have a go and go to the District Court, they do not know what the outcome is going to be because there is no guidance to anybody setting out what the District Court must consider.

The CHAIR: So as I am hearing you, sections 31, 51 and 51A are going to be repealed —

Mr MACFARLANE: Yes.

The CHAIR: — and they will replaced by provisions that contain precise objects for decision-making.

Mr MACFARLANE: Yes. So sections 31, 51 and 51A will be repealed by clause 82 of the Strata Titles Amendment Bill. In their place, part 12 will be inserted. Part 12 contains a process for unanimous termination and a process for majority termination. A majority termination only applies to schemes of five or more lots.

The CHAIR: Can I take you now to question 20, the question about the treatment of vulnerable people? This is about proposed section 175(1), which requires that an outline of a termination proposal must, as required by legislation, make arrangements for independent advice or representation and include details of the proposed arrangement. Proposed section 190(1) provides that regulations may require proponents to enter into specified arrangements for lot owners to obtain independent advice or representation. We have a quote from the EM. Why do the provisions of the act—I might be asking this in a slightly different form than you were sent—expressly require proponents to fund and provide vulnerable individuals with access to independent advice or representation?

Mr MACFARLANE: I think the key reason for this permissive language in section 190 is that section 190, and that is the requirement for a proponent to pay money for specified owners to obtain advice and even representation, section 190 itself may apply to all owners; in other words, the proponent may be required to pay money that every owner within a scheme should be able to draw upon when they seek expert advice and representation in response to the termination proposal. Under section 190, the proponent will be required under the regulations provided for to pay for owners who meet specified criteria, and that specified criteria will be set out in the regulations. Those owners can then use that money to obtain independent legal advice, legal representation, valuation advice and financial and taxation advice in connection with a termination proposal.

The CHAIR: This is whether or not they have been deemed vulnerable.

Mr MACFARLANE: If they are deemed as specified persons. So the original policy thinking was that we would provide funding for vulnerable persons. But as we have begun consulting with particularly community groups about what that definition should be, it has begun to dawn upon us that perhaps we should have a broader classification. The concept is, if you are sitting in your strata scheme, the strata company has an outline proposal served on it, the strata company passes an ordinary resolution permitting the proponent to go away and get subdivision approval and then work-up a full proposal, that proponent then serves a full proposal on the strata company and, at that point, as an owner, if you are a prudent owner you would probably want to seek some sort of legal and other expert advice. So perhaps all owners should be entitled to receive some sort of funding so that they can all respond to a termination proposal, and perhaps owners who are vulnerable should actually receive a higher level of funding so that all the owners are on an even playing field.

Back to the policy thinking behind section 190, it has been drafted so that all owners could be the owners who are those specified in the regulations as meeting specified criteria. The definition of owners who meet that specified criteria and, in particular, “vulnerable owners”, is still now being developed and we are looking at that in consultation, particularly with community groups. I think the reason why we were proposing to provide a definition for that specified group of owners is that even concepts such as vulnerable and who is a vulnerable owner, I believe those things do change over time as society’s expectations change. But as a starting point, and this is subject to further consultation, the following criteria are being proposed in discussions that we have with community groups as to what is the basis for deciding whether or not a person is entitled to this funding support and whether they are vulnerable in the first instance. Things such as age, illness, trauma, disability or any other reason that may impair that owner’s ability to fully understand, participate in, present their case or even make an informed decision on a termination proposal, that may be one of the criteria by which someone will be regarded as a vulnerable owner. Another criteria is where the owner is financially disadvantaged to the extent that it would not be reasonable to expect that owner to have to pay for professional advice in response to the proposal. Just to reiterate, the purpose of section 190 is to enable those specified owners to obtain funding so that they can (a), obtain a licensed valuer’s report to counter any valuation evidence submitted by the proponent

and, (b), pay for expert advice on taxation and financial implications of the termination and to also pay for legal advice on the proposal and, finally, to pay for a lawyer to represent that person at the SAT proceeding if the matter does proceed to SAT. The regulations themselves will set out how much money should be set aside and I guess the intent of this vulnerable owner funding safeguard was to ensure that certain types of owners, who might be disadvantaged when they respond to a termination proposal, have access to additional resources through additional assistance. This funding is actually aimed at ensuring that vulnerable owners are put on that equal footing with other owners so that they can properly respond and, if need be, effectively object to a termination proposal. At this stage, we believe that the definition of "vulnerable owner" is meant to be a very wide definition and it should include a broad class of owners.

Hon DONNA FARAGHER: Can I just ask with respect to section 190, both of the subsections refer to the regulations "may" require or "may" include a requirement. Can I ask why it would not be "must" include a requirement? I particularly reference that with regard to vulnerable people. We get into semantics about "may" versus "must" a lot in relation to legislation, but the way you have just spoken to us then gives me the very clear impression that they must provide it. But when you actually look at the text of the legislation, it says "may".

Mr MACFARLANE: The text says "may" and part of the reason for that was we were not sure what amount of funding should be provided, who it should be provided to and exactly what that funding could be used for when this provision was drafted.

Hon DONNA FARAGHER: But could you, I suppose, clarify some of those elements in the regulations, notwithstanding that the principal act would refer to "must", so that everyone is clear effectively that they must receive some support? The technicalities of the range and all that sort of thing could be left to the regulations.

[11.40 am]

Mr MACFARLANE: I would agree with that.

Ms WHITFIELD: Certainly, we were proceeding with investigating and consulting on the matter with every intention of creating regulations on those items.

Hon DONNA FARAGHER: So from your point of view, just so that I am clear, based on that—thank you for that—you would not see that there was necessarily a major issue if the word "may" was changed to "must"?

Mr MACFARLANE: I cannot speak for the government's position on that.

Hon DONNA FARAGHER: Of course you cannot; I appreciate that. But, I suppose, in the context of the legislation and the policy that sits around it and what you have just already explained to us—and, obviously, I preface my comments by saying that you are obviously not the minister and these are the decisions that are made by government—there is nothing in it that immediately comes to mind that would cause a significant issue if it were changed from "may" to "must"?

Mr MACFARLANE: Sorry. The question was?

Hon DONNA FARAGHER: Do you see any specific concerns or issues that would arise from changing the terminology from "may" to "must"?

Mr MACFARLANE: From a drafting perspective, no.

The CHAIR: It sounds as if you have left it deliberately wide in order to capture as many people in the concept of vulnerability as you can and that your thinking has actually evolved on this as you have consulted with groups.

Ms WHITFIELD: Yes, it has. Particularly when we have held meetings with community groups, it has come to light that the definition of who is vulnerable is considerably broader than we had thought and we know that we need to do more consultation with those groups to come to a definition that does what we want it to do, which is to ensure that those people who are vulnerable actually get the resourcing they need to cope with the proposal.

The CHAIR: Are those consultations ongoing? I mean given that the legislation is in the Parliament now, you are consulting basically about the contents of the regs, are you?

Mr MACFARLANE: Yes. Since the referral of part 12 to the legislation committee, that consultation has come to a halt and I think it is prudent to say that further consultation on the regulations relating to termination should hold until after the committee has handed down its decision. I think it is probably also prudent that we wait to see whether or not the recommendations the committee makes are taken up by the Legislative Council. We had started consultation on that point but we will not be doing that now, I think, until after some decisions have been made.

The CHAIR: Which is another good reason to have a tight time frame. Thank you for that.

Can I ask you two more questions about the assistance for vulnerable people. One is about the amount of money that is made available. You have said there was some uncertainty about how much would be made available for this kind of extra advice. Are you coming to a decision? Is it going to be some percentage of the value of what is proposed?

Mr MACFARLANE: We have no concept at this stage of the amount. We were thinking more along the lines of a dollar value rather than percentage, because I think the issue goes to: What would it take for a vulnerable owner to obtain a valuation report? How much would it cost to obtain a reasonable level of legal advice in relation to a proposal? What sort of amount would be required to pay a lawyer to represent you for one or two days in a SAT hearing? I do not think those matters should be left up to a percentage of the overall proposal. I think it is what the individual owner needs in order to respond. But we do not have a dollar figure in mind.

The CHAIR: But you are envisaging that dollar figure being set by regulation?

Mr MACFARLANE: Yes; and I think that is appropriate because what we have seen with the Strata Titles Act itself is that when you lock figures into an act, it can take many, many years before you can ever alter those figures.

The CHAIR: The other question I have for you on that same subject is about the independence of the advice. How do you ensure that the advice is independent?

Mr MACFARLANE: The regulations will provide that the advice is not to be provided by a lawyer or a valuer who represents the proponent. If advice is actually given by a person who is not independent, I would suggest that the process to terminate the scheme will not have been properly followed. If such evidence of the process to terminate not being followed is actually given to SAT, I would suggest that SAT would not be able to confirm the termination resolution. In other words, it would not be in the interests of a proponent to even try to provide advice through an associate because that could be regarded as a breach of the process itself to terminate.

Ms WHITFIELD: Could I also add that although the regulations have not been worked on comprehensively at this stage, other elements that you could look at when defining "independent" would be things like not a business associate of, not a spouse of, not related to—that sort of fairly standard usage of "independent".

The CHAIR: Can I take you to question 21. This is about proposed section 176(1) where it provides —

A termination proposal can only proceed further if, within 3 months after an outline of the proposal has been submitted …

(a) … the strata company passes an ordinary resolution supporting consideration of a full proposal; …

Why is it only an ordinary resolution required to be passed, which requires only a simple majority rather than a special resolution?

Mr MACFARLANE: The ordinary resolution is actually the trigger that permits the proponent to (a) apply for subdivision approval and (b) prepare a full proposal. Special resolution itself was not proposed because that resolution is very similar to the original 75 per cent termination resolution that was contained in the Strata Titles Amendment Bill that was introduced to Parliament on 28 June 2018 and that particular termination resolution is a 75 per cent vote required before you could apply to the State Administrative Tribunal for the procedure and fairness review.

Ms WHITFIELD: Another thing is the standard of the ordinary resolution is it is just an outline that they have considered at that time and they just want to show that, yes, we will consider a full proposal if it is shown to us, so they are not locked into anything and so it does not need to be a very high percentage.

The CHAIR: I take you to proposed section 179(3)—this is question 25—which talks about "A full proposal must incorporate a report … prepared and certified by a licensed valuer". Is it customary for only one valuation to be obtained?

Mr MACFARLANE: My understanding is that there is no customary practice for valuation of a lot when an offer is being made on a lot. When we are talking about a strata lot and someone is simply trying to sell that lot, I am not aware of any customary practice where owners go out and obtain multiple valuations. I think there is another point, which goes to one of the other questions that was put to us, is: should there be more than one valuation? I would suggest that there is no need for multiple valuations to be provided within a full proposal. The termination valuation report, which is part of a full proposal, is actually meant to give owners an indication only of the market value of their lot. Owners themselves can go away and obtain their own valuation to counter any information that is contained in the termination valuation report. I think we have to remember that any evidence that the termination valuation report—if that report has been prepared in a way where it actually clearly favours the proponent, that sort of evidence is something that SAT is going to look at when they consider whether or not the full termination proposal has been prepared in a way that contains misleading information. That is one of the key tests that SAT must ask when they look at a termination proposal.

The CHAIR: So you would not see a need for more than one valuation to be reflected in that provision?

Mr MACFARLANE: Not in that provision because that provision relates to the proponent preparing a proposal and I think it is more appropriate that owners have the ability to go and obtain their own independent advice.

The CHAIR: Yes, that makes sense to me from your experience. I refer to question 26. Can you give an idea of the matters the regulations may prescribe relating to the determination of the market value of a lot for a termination valuation report pursuant to proposed section 179(3)?

Mr MACFARLANE: Certainly. The regulations may prescribe how market value is to be calculated and the regulations will likely require that the market value is to be calculated taking into account recent sales history and the highest and best use of the land and also the owner's share of the

common property in that scheme. We will undertake further consultation on that point before that particular part of the regulations will be drafted.

[11.50 am]

The CHAIR: Which would presumably satisfy the criticism that there is not enough weight given to the potential development value of the site.

Mr MACFARLANE: Absolutely. That particular point addresses the question of to what extent the highest and best use of the land is actually taken into account when a valuation is done.

The CHAIR: Question 27, regarding the full proposal meeting the requirements in proposed section 179—is it correct to say that it would be down to the owners and strata company to determine it meets the criteria when there is a unanimous vote in favour?

Mr MACFARLANE: Yes, it is correct to say that.

The CHAIR: And will they always be qualified to do so? Will strata managers have the required expertise?

Mr MACFARLANE: First, the owners may determine whether or not a full proposal actually meets the criteria of section 179, where a unanimous resolution has been passed. Nothing in part 12 specifies that strata managers are to be involved in a termination process. In terms of whether strata managers have that required expertise, I am not sure that they need to be involved in any event.

Ms WHITFIELD: Can I just add that it is the equivalent to somebody who owns a freehold freestanding house having a proposal given to them by a developer of, "Here, I'd like to buy your land." Are they qualified to make that decision? Well, it is their asset and they can consider the pros and cons of the information that has come in. I think it is the equivalent in strata. Can they consider the information that is given to them about the asset and whether they would like to sell it or not? It is the same that any householder has.

The CHAIR: Question 29 takes us to section 181(1) and 181(2), dealing with general meetings of the strata company. If the strata company is able to resolve that a proponent be absent for the whole of the meeting, does that mean that they do not have an automatic right to be heard by the strata company?

Mr MACFARLANE: The proponent can make submissions in writing to owners. The purpose of the general meeting is actually to allow owners to discuss the proposal and if they feel they do not want the proponent present for those discussions, I think it is entirely appropriate for owners to have that wish met.

Hon SIMON O'BRIEN: What if the proponent was already an owner—they have been going around buying up units to redevelop?

Mr MACFARLANE: In that case the provision does actually specify that the owner, if they are a proponent, can be present.

Hon DONNA FARAGHER: So it is only in the circumstance where the proponent actually does not have an entitlement as such, but, otherwise, if they own three, four, 15, 16 units, for example, they would be eligible to stay in the room?

Mr MACFARLANE: Section 181(2) provides that where they are not an owner they can be asked to be absent for the whole meeting, but if they are an owner they can be required to leave the meeting while the proposal is being discussed at certain points.

The CHAIR: Question 30 goes to section 181(4)(b), which provides the council of the strata company may inform the owners of discussions it may have with the proponent. If such discussions have taken place, should it not be mandatory to inform the owners about those discussions?

Mr MACFARLANE: That is a very interesting question. The first point would be that there is a regulation-making power in section 181(5) and the regulations could require owners to be informed of those discussions. The point that we had to reach in drafting was to what extent do we put procedural detail in the bill and to what extent do we put procedural detail into the regulations. I would suggest that the need to include absolutely every detail of procedure involved in the consideration of the full proposal and vote within the act itself is possibly not appropriate. Procedural matters of this nature are often best dealt with in regulations. This is especially so when you have a new procedure being introduced. Such a new procedure may need to be modified soon after enactment as a result of unforeseen procedural issues. I would also point out that the discussions of the Council, as they involve a termination proposal—any minutes that are taken of those discussions will actually have to be provided to SAT. This is provided under section 183(6)(c)(iii).

The CHAIR: The next question 1.30.2—should occupiers who are not owners not also be informed of those discussions, or is that left to the owners to inform them?

Mr MACFARLANE: This is left to owners. Owners have more at stake in these discussions than occupiers.

The CHAIR: This leads to a question that arose from one of the submissions that we received, which is about somebody who is leasing to run a business. Would they be eligible for any compensation in any scenario if there is a sale through termination of the strata scheme? You might want to take that on notice. We have made that submission public this morning.

Mr MACFARLANE: I will take that on notice.

The CHAIR: We might be able to give you a copy of the submission and ask for your comments on that.

Question 33 is about proposed section 182(6), which provides the determination resolution is passed if the number of votes cast in favour of the termination proposal equals the number of lots in the strata title scheme. Why was this wording chose instead of unanimous as is used in the existing act?

Mr MACFARLANE: A unanimous resolution can include the option of counting the vote by poll, which is where you look at unit entitlement. This section was drafted to clarify that the vote on a termination resolution is only taken by lot, not by unit entitlement.

Ms WHITFIELD: The policy intention there is to make sure that every person in the scheme has an equal vote—or every lot has an equal vote. If somebody has a more luxurious and larger apartment and has more unit entitlement, they do not have more say in the end process than somebody with a smaller lot.

Mr MACFARLANE: Just to correct that point—unit entitlement is considered when the matter goes before the tribunal.

Ms WHITFIELD: But only later.

Mr MACFARLANE: Yes.

Hon DONNA FARAGHER: Why is there a difference in terms of—you said in SAT unit entitlement is considered, whereas in the earlier part it is not so that everyone is equal. Why the difference?

Mr MACFARLANE: The difference was we looked at, for example, the majority termination process in New South Wales. In their process they look at what the trigger is before you go for the review. The trigger there is also one vote per lot. Unit entitlement of owners is considered when you go into the review process and we thought it was appropriate to do that in this case.

Hon DONNA FARAGHER: Why?

Mr MACFARLANE: The question as to whether you attain an 80 per cent vote on unit entitlement may result in certain situations where, if you have one owner who has a very large unit entitlement, they could always block a termination from happening so in those sorts of schemes you will never have—I will step back a second and say that if the requirement was before you could have a majority process proceed to the tribunal review that you need an 80 per cent vote by lot and then an 80 per cent vote by unit entitlement, there may be some schemes where you will never get that vote under unit entitlement because one owner may control more than 20 per cent of the unit entitlement and can therefore block the process for moving on any further.

[12 noon]

The CHAIR: In relation to the majority being the 80 per cent of the total number of lots in the scheme and the strata titles scheme having four or more lots, what was the basis on which you chose those thresholds? I think you might have just answered part of that.

Mr MACFARLANE: The voting threshold was actually chosen through parliamentary debate.

The CHAIR: Yes.

Mr MACFARLANE: Only schemes with five or more lots are subject to the majority termination process. At least 80 per cent of the lots in such a scheme must vote in favour of a termination proposal before the proponent can actually apply to SAT for a fairness and procedure review. Schemes with less than five lots are not actually subject to majority termination. They can only terminate through a unanimous resolution. It is important to note that 82 per cent of all strata and survey strata schemes in WA have less than five lots and they will not be subject to the majority termination process.

The CHAIR: Eighty-two per cent?

Mr MACFARLANE: Yes; that is in terms of numbers of schemes.

The CHAIR: Have you run any data on what the difference is between them if we move to six or eight? Do those numbers shift significantly?

Mr MACFARLANE: We do not have those numbers on hand right now. If you were to turn to page 5 of the Landgate submission, we have provided statistics about schemes. The thing with strata is, there are 71 315 schemes but there are 317 696 lots, so if you were to look at how many lots in WA that are strata or survey strata that are within schemes of four or less, you are talking 146 000 such schemes. But to get back to your question, we have not run the numbers in relation to different voting thresholds.

The CHAIR: Are they the voting thresholds in terms of the 80 per cent or the five per cent?

Mr MACFARLANE: Sorry; we have not run the numbers in terms of, if the 80 per cent was to apply to six, seven, or eight-lot schemes, how many lots would be affected.

The CHAIR: What about the difference between 80 per cent and 90 per cent of the total number of lots in the scheme?

Mr MACFARLANE: If we were to introduce a threshold of 90 per cent, firstly, any scheme with nine lots or less would not be able to terminate through the majority process, so it would only apply to schemes of 10 lots or more.

The CHAIR: But that does not apply to the 80 per cent applying to lots less than eight?

Mr MACFARLANE: Sorry; could you clarify the question, please?

The CHAIR: I am not sure that I can! Did you not just say that if we move to 90 per cent, you would exclude everything with fewer than nine lots?

Mr MACFARLANE: From the majority termination process; that is correct, because you are effectively saying that a nine-lot scheme needs a unanimous resolution in order to reach that 90 per cent vote.

The CHAIR: What about an eight-lot scheme with 80 per cent?

Mr MACFARLANE: Eight-lot schemes can terminate with 80 per cent, yes.

The CHAIR: Yes, I see. Question 35 goes to part (9) of section 182, which provides —

> A termination proposal must not be modified in a material particular by the proponent of the proposal after a termination resolution has been passed …

What is a material particular?

Mr MACFARLANE: I think an example of a material particular would be where the amounts that are offered to the owners of the lot are altered—that would be a material particular. If you were being offered $1 million and then the proposal was modified so that you were being offered $1.2 million, that is material. A modification to the proposal that is changing the name of an owner or an occupier of a lot would not be a material particular.

The CHAIR: Question 38 is our next one, which goes to section 183(9)(b) requiring that the tribunal can only confirm a termination resolution if the proponent satisfies that the owner who does not support the proposal "will receive fair market value for the lot or a like for like exchange for the lot;" Is it to be assumed that those owners who voted in favour of the proposal believe that the values that are contained in the proposal represent, in their view, a fair market value for their lots?

Mr MACFARLANE: Owners can choose to vote in favour of a termination proposal and there is actually no requirement that an owner who votes in favour will receive fair market value. There is no requirement now stopping an owner of a lot, or even a piece of non-strata land, from selling their lot for less than market value. I think the primary focus that has been put into the drafting of section 183 is that SAT is primarily concerned, under the drafting there, with protecting the rights of the minority owners who oppose the termination.

The CHAIR: I wonder if I could take you to some of the subsections of that question as we sent it to you. This concept of like-for-like exchange—can you give us your ideas about how you can turn that from a subjective rationale to something that a court is able to extrapolate from second reading debates, committee reports and that sort of thing? Is there a foundation of common assumptions about like-for-like exchange? Can I give you a specific example that has occurred to the committee's collective mind? You would be aware of that the previous witness was talking about a development down in Cottesloe. Would like for like include a similar property in Halls Head, for example?

Mr MACFARLANE: No, I do not think so; not at all.

Ms WHITFIELD: Unless that is what the person wanted.

Mr MACFARLANE: The intention for like for like, in the case of Mr Prainito, was not to provide an ocean-front apartment in another suburb. The intent behind like for like was to enable an owner, if

they were being forced to sell, to stay within the same suburb and preferably in the same area of that suburb. In the case of an owner who has an ocean-front apartment, a like-for-like exchange would be another ocean-front apartment in that same suburb. The like-for-like replacement lot protection, when it is combined with this requirement that an objecting owner is no worse off financially, actually gives SAT the power to modify a termination proposal. I would suggest they are useful set of provisions that can ensure that objecting owners still have a home in the same suburb and they are not financially worse off or out of pocket as a result of moving to that apartment. It is important to point out that a like-for-like replacement lot is actually something that the proponent can choose to offer to an objecting owner, so it is an option that they have. However, if an objecting owner can give evidence to SAT that they need a like-for-like lot so that they are no worse off financially, it is within SAT's power to modify a proposal and to require the proponent to give the objecting owner a like-for-like lot and cover all the taxes, moving costs and other transaction costs including discharging and potentially even re-registering a mortgage over the replacement lot. I want to give you an example of where someone would, as a result of a termination, be offered a lump sum where they would be financially worse off. That would be where an offer was being made to an objecting owner who was a pensioner.

[12.10 pm]

If the pensioner were paid a lump sum by the proponent in exchange for the lot that the pensioner is living in, they may actually lose their pension. In such a case, evidence could be put before SAT that this objecting owner is going to be worse off and, as a result, you, SAT, cannot order the termination proceed unless you are going to take further steps. This is where SAT has the power to modify the proposal, and they could modify the proposal as follows: they could say, firstly, "You, proponent, must provide the objecting owner, who is the pensioner, with a like-for-like replacement lot that would be in a nearby location, with equivalent facilities and have equivalent amenity." Back to your question in terms of if it is an ocean-front apartment, it should be in a neighbouring location and, when we talk about the term "amenity", it means if it is ocean front, it should also be an ocean-front replacement lot.

Further elements that would be provided in the order are that the replacement lot should be at least of an equivalent of the fair market value of that owner's current lot. All of the costs associated with things like duties and taxes and moving costs would have to be paid by the proponent, and the proponent would simply have to ensure that the owner will not lose their pension if the termination resolution is confirmed.

I think another example of when SAT could actually use their power to modify a proposal in a way where they would actually order the proponent to offer a like-for-like replacement lot is the situation where, for example, an objecting owner owns a lot worth, say, half a million dollars, but they actually have a mortgage registered against that lot to the tune of $1 million. If the objecting owner were forced to sell that lot in exchange for a lump sum and the lump sum is going to be less than $1 million, the objecting owner would actually be financially worse off. Once again, if evidence could be put to SAT of that being the case, SAT could not order that termination proceed unless they modified the proposal in the following way: firstly, to provide that the objecting owner receive a like-for-like replacement lot that met all those criteria of being in a nearby location, with equivalent facilities and amenity; to pay all the owner's costs, duties, taxes and other moving costs; and also to pay the owner's costs of, firstly, discharging the mortgage over the current lot and any costs associated with registering a new mortgage over the replacement lot. On that basis, you would say, "Okay; the termination can proceed because that owner is not going to be any worse off financially."

I guess, as a final point—sorry for going on a bit too long here—there is a further example and this relates to where you have a scheme that is arguably the last old scheme left in a particular suburb. In that case, if the objecting owner is paid a lump sum for their replacement lot, they may not be able to buy back into that suburb, because all the remaining schemes and land in that suburb are new and they are highly priced. So the objecting owner there could attempt to show to SAT, "Look, you give me this money; this lot that I own is my principal place of residence. I am to be left without a home. If I want to stay in this suburb, I am actually going to be out of pocket because a replacement lot, if I buy it myself, is going to cost another half a million dollars." In that case, SAT would have, if they considered, yes, you as an owner are going to be financially worse off, the power to order that the termination proposal once again be modified. It would be modified so that the objecting owner is provided with a like-for-like replacement lot in the same suburb nearby, even though the replacement lot is worth substantially more than the current lot. In addition to that, the proponent would have to pay all of the moving costs, taxes and so forth associated with moving to that replacement lot. That is the intent behind the like-for-like provision when it is combined with the requirement that no owner be any worse off financially and the tribunal's power to modify the proposal to ensure that a person does receive fair market value for their lot.

The CHAIR: That is very comprehensive. I think you have answered the other questions in that section. Are those examples you have given us drawn from judicial decisions or are they hypothetical scenarios in relation to the operation of new proposed part 12?

Mr MACFARLANE: Yes, they are hypothetical scenarios.

Hon DONNA FARAGHER: Can I just clarify just so that I am clear? I am looking at the marked-up copy, but the section in relation to fair market value says "will receive fair market value for the lot or a like for like exchange for the lot". As I understand it, essentially what you are putting to us is that the proponent will—this is in the first instance—put forward to the objecting owner a proposal that they will get fair market value or they will get like for like. In the first instance, it is the proponent who effectively identifies how they want to proceed; is that correct?

Mr MACFARLANE: That is correct.

Hon DONNA FARAGHER: Take, for example, the objecting owner is offered fair market value. They do not want that; they want like for like. In that instance, as you indicate, the objecting owner would be able to apply to SAT; is that right?

Mr MACFARLANE: In that instance, the objecting owner, if they were able to show that they will be financially worse off as a result of the termination—if they can show that to SAT—SAT has the power to modify the proposal and include an order that the proponent obtain a replacement lot for that person.

Hon DONNA FARAGHER: But when you talk "like for like", it is not necessarily all monetary value with respect to someone's home. Obviously, there are other elements. When it is your home, there are the amenities, there is the personal value—there are those sorts of things, which are obviously subjective, and I understand that. But from what you are telling me—forgive me if I have got this wrong—you are suggesting that if the proponent makes an offer of a fair market value, the objecting owner can only go to SAT if they believe that they are going to be financially worse off. They cannot go to SAT to say, "Actually we want like for like. That is what we want." I just want to be clear on that.

Mr MACFARLANE: To clarify, the objecting owner does not have to go to SAT. If the proponent obtains the 80 per cent or more vote, the proponent is the one that actually applies to SAT. During the SAT hearing, owners have a right to be heard and put their views. In the case that you have asked, if an objecting owner is being offered only a lump sum, if you like, that is the initial right of

the proponent to choose: "Do I offer you a lump sum or do I offer you like for like and other payments?"

Hon DONNA FARAGHER: Yes, understood.

Mr MACFARLANE: In certain circumstances where that objecting owner is able to show that a lump sum only will leave them in a worse-off financial position—if they can establish that—SAT cannot order that the termination proceed. SAT does have the power to modify the proposal in a way where it says, "Okay; you, proponent, have offered a lump sum. It's actually going to leave that owner worse off financially because, for example, they are a pensioner. So you, proponent, have to provide them with a like-for-like lot" and SAT can modify the proposal by way of its order. If the owner who is objecting who is offered a lump sum cannot establish that in receiving the lump sum they are going to be worse off financially, yes, the lump sum payment will stand.

Ms WHITFIELD: Can I also add that SAT, in its consideration, considers the benefits and detriments to all owners of the termination proceeding, and that can include non-financial elements such as they are very fond of the location.

The CHAIR: You answered my question about whether your examples came from previous judicial decisions and you said, no, they were hypotheticals you had run in relation to proposed part 12. Have you looked at the experience in other jurisdictions where they have a more modern form of legislation in regard to termination of strata schemes?

[12.20 pm]

Mr MACFARLANE: Yes, in the submission that Landgate—this is the submission to the standing committee dated 25 September from Landgate. We have actually included in one of the appendices a very extensive, I guess, comparison or analysis comparing the majority of termination processes in WA as proposed by this bill, in the Northern Territory, in New South Wales and Singapore. That is detailed in appendix I of the submission.

The CHAIR: Thank you.

Ms WHITFIELD: Page 137, I think, this is.

The CHAIR: Excellent, thank you for that.

Question 1.40: is there any other legislation in force, or has there been in the past, in WA or other jurisdictions where the powers of compulsory acquisition have been used other than for the purposes of acquisition by the government?

Mr MACFARLANE: Strata schemes and survey strata schemes are actually a form of property that is jointly owned. I say that because owners might own their individual lot, but they are all joint owners of the common property that forms part of that scheme. It is important to note that where people jointly own, say, a house—I am talking about non-strata property—as tenants in common and that house is not strata titled, if one of those owners owns 50 per cent or more of that house and they want to sell the house and the other owner does not, section 126 of the Property Law Act gives owners standing to apply to the Supreme Court for an order to sell the house and divide the proceeds. That is an order for forced sale. This is called "an order for sale in lieu of partition", and it is not uncommon for such an order to be given. I refer the committee to the case of Orrman v Orrman and the citation of that is included on our response to this morning's questions.

The CHAIR: This is in relation to relationship breakups and that sort of thing?

Mr MACFARLANE: It is not limited to relationship breakups, no. This is a power by virtue of section 126 of the Property Law Act, that is given to the Supreme Court, and there is no requirement for a relationship breakup. Another example of legislation that forces compulsory acquisition of land

against the wishes of owners actually sits within the Strata Titles Act, and it is section 51 of the current act. I referred earlier this morning to the case of McHattie v Tuscan Investments, and there the District Court used section 51 of the Strata Titles Act to order the sale of common property against the wishes of some of the owners in that strata scheme. In that case you had a strata scheme and the owners voted on a resolution to accept an offer made to purchase part of the common property, which was adjacent to the would-be developer's land, but the vote itself did not achieve the required level, and subsequently an order was sought from the District Court to deem that the resolution had been passed in order to enable the sale. The owners who are in favour of the sale argued that the land was not required within scheme and that they would all benefit financially and that no owner would suffer significant disadvantage. The District Court found that those arguments were persuasive and they ordered the resolution deemed to have been passed against the wishes of those who opposed the resolution. The result of the order was that part of the common property was sold off out of the strata scheme.

The CHAIR: Thank you. In relation to the no financial disadvantage matter, can you give us some idea about what kinds of costs would be covered by the proponent to ensure the owner would not be disadvantaged? This is question 1.41.1. For example, would the fair market value be greater than the amount still owed under any mortgage?

Mr MACFARLANE: In answer to that question, I would refer back to an earlier example I gave where an objecting owner, for example, owns a lot worth just $500 000, and the mortgage on that lot is $1 million. If that objecting owner were forced to sell their lot in exchange for the lump sum, and the lump sum that they received was less than $1 million, once again, when that matter went before the tribunal, if that owner was able to establish to the tribunal that they would be worse off as a result of receiving less than $1 million because they would have to pay the difference in the mortgage itself, SAT could not order the termination go ahead if they found that that owner would be worse off financially as a result of receiving a lump sum, but SAT could order the modification of the proposal and could require the proponent to provide that objecting owner with a like-for-like lot. If the like-for-like lots in the area were worth substantially more than the lot in the scheme that was going to be terminated, the proponent would have to pay more than the fair market value, if you like, of the current lot. The proponent would also have to pay the owner's duties, taxes and moving costs, and they would have to pay the owner's costs of discharging that mortgage and even re-registering a mortgage over the new lot.

Hon PIERRE YANG: In which clause of this bill are all these articulated?

Mr MACFARLANE: In particular, in clause 83, proposed section 183. When we are looking at the question of compensation or value, you are particularly looking at proposed sections 183(9), (10), (11) and (12), and then if you are looking at the powers of modification, you are looking at proposed sections 183(13), (14), (15) and (16).

The CHAIR: How do you quantify harm resulting from the taking of property without agreement. This is question 1.42.2.

Mr MACFARLANE: That was an interesting question, because proposed section 183(10)(b)(iii) does not refer to harm. It refers to taking the property without agreement. An objecting owner within one of these termination proposals is one whose lot has been taken without agreement, and I would suggest that SAT has the discretion to award up to 10 per cent more than the fair market value to such an objecting owner.

The CHAIR: You do not have to quantify harm if it is without consent?

Mr MACFARLANE: The provision does not specify harm. The provision does draw upon section 241 of the Land Administration Act, and some of the cases in relation to section 241 may refer to harm, but in terms of the cases, and I have included a couple of cases within the answer to the next question —

The CHAIR: Yes, 1.42.3.

Mr MACFARLANE: Justice Beech, in the case of McKay v Commissioner of Main Roads—and the citation is in answer to question 1.42.3—in that decision said —

> The amount added under s 241(8) —

That is of the Land Administration Act —

> is compensation for the taking without agreement. Section 241(9) affects the fixing of that amount. It provides a limit of 10% of the amount otherwise awarded, unless I am satisfied that exceptional circumstances justify a higher amount.

There is another case I have cited there of Justice Edelman and this was Lenz Nominees against the Commissioner of Main Roads. The citation is also within the same answer. Here Justice Edelman says —

> The term 'solatium' does not appear in s 241 of the Land Administration Act. Its etymology is the Latin solacium, 'comfort'. The concern is to provide a monetary redress for a non-pecuniary loss arising from the taking of land without agreement.

In terms of getting back to the question, I am not sure that harm needs to be demonstrated. There is nothing, at least in proposed section 183, that requires that.

The CHAIR: I think you have also just answered 1.44.1. So, a "non-financial detriment" would be some things you have just listed: mental stress, health.

[12.30 pm]

Mr MACFARLANE: Partly. So, the provision that does give SAT the power to pay up to 10 per cent more above fair market value, and if there are exceptional circumstances, more than that, that partly addresses the non-financial considerations. But I think in answer to the question under 1.44.1, we would also say the following; that is, individual circumstances for each owner, whether those circumstances are financial or non-financial—and that means including whether or not the owner has specific mental health issues, they have other health issues or some other physical requirements—those matters are to be considered by SAT when it asks the question whether the termination proposal is just and equitable and in particular when SAT considers, and I quote from the bill —

> the benefits and detriments of the termination proposal proceeding or not proceeding for all those whose interests —

Including owners —

> must be taken into account.

There I refer to proposed section 183(12)(e).

The CHAIR: Thank you. I notice that you have given us comprehensive answers to questions 1.47 and 1.48 in your written response and 1.53. Other committee members may have other questions for you, but I wonder whether I can take you to questions that have arisen since we wrote to you and then I will open it up to other questions. I think you have already answered this one. The question has been raised about whether there is a statement of principles or objects associated with

this section of the bill. Is there such a thing? I think you did talk about a set of principles earlier in your evidence.

Mr MACFARLANE: I think Mr Prainito mentioned a statement of principles, and I believe that exists. I believe there may be a statement of principles under another jurisdiction, but it is not always used in majority termination legislation.

The CHAIR: Do you want to take that one on notice?

Mr MACFARLANE: Yes.

The CHAIR: Okay. That would be useful. Thank you. You would have heard the previous witness talk about the fact that Seapines was mooted at one stage of being a possible case study for the way that part 12 operated. Was that not actioned? Can you talk a bit about whether that was a proposal at one stage and why it did not eventuate?

Mr MACFARLANE: I am not aware of whether Seapines should be an example that should be worked up further.

The CHAIR: Has it occurred to Landgate to use a couple of concrete examples and work them through under proposed part 12 to see what some of the outcomes might be—stress testing, for example, the measures?

Mr MACFARLANE: In terms of concrete examples, we did not use concrete examples. What we did do in terms of developing the policy and then the drafting for the bill was to, I guess, extensively consult, and in our submission we indicate that we did release a consultation draft of termination to government, industry and community groups to obtain their feedback. We looked at that feedback and considered it and it did result in further refinements to the drafting on termination. What we also did was we sought advice from experts in areas such as compensation payable where there is a compulsory acquisition and also experts in terms of valuation, and this is referred to in the submission.

We also looked at how majority terminations is either drafted or preferably operating in other jurisdictions, and details of how we did that are set out in the submission. We also looked at advice that was provided by the City Futures Research Centre from the University of New South Wales and they provided specific advice in relation to the consultation draft of the bill for termination schemes. We also spoke with experts in other jurisdictions to ascertain from them, for example, in Singapore, how elements of majority terminations were working there and we inquired, where they had undertaken reforms, whether those reforms were sufficient or not. All of that I think we have detailed within the submission.

The CHAIR: Thank you. Just two other quick questions. One refers to grandfathering and the other one is about a possible Henry VIII clause. A couple of submissions have suggested that we need a grandfather provision not to make these changes retrospective.

Mr MACFARLANE: I would not be able to comment upon that. I think that is a matter for the government and in particular the minister to comment upon.

The CHAIR: Okay. The other question about the possible Henry VIII clause—I think it is in relation to the planning act.

Mr MACFARLANE: In answer to that—and I have put this in Landgate's response to the standing committee questions that we have submitted this morning—there are three sections within part 12 and we do not actually consider that those sections are Henry VIII clauses. It was not intended to amend the Planning and Development Act, but simply to read references in the Planning and Development Act in a certain way to make the Planning and Development Act work correctly for

termination. There is no power to alter or modify the Planning and Development Act as it applies to subdivision approvals. For example, section 177(2) within the bill extends the Planning and Development Act to termination subdivision under the Strata Titles Act to which the Planning and Development Act would not otherwise apply. When the Planning and Development Act was drafted, termination subdivision was not considered. In that context, provision has been made for the Planning and Development Act to be modified or adapted only as it applies to termination subdivision so that termination provisions can operate rationally and effectively in that context.

The CHAIR: Let me open up questions to my colleagues.

Hon DONNA FARAGHER: I have about three questions. One might be fairly quick. I will refer to proposed section 182 relating to an independent person being appointed to tally and count votes. This is a fairly quick question. My recall is that the determination as to who can be deemed an independent person will be referenced in the regulations; is that correct?

The WITNESSES: Yes, that is correct.

Hon DONNA FARAGHER: I appreciate I have asked this in another forum, but is that at subsection (13); is that right?

Mr MACFARLANE: That is correct.

Hon DONNA FARAGHER: Can I ask why we would not just perhaps separate that out a bit further, because it does not actually specifically reference in that part the independent person? Would it be useful to actually provide a separate or an additional subsection, if I might put it that way, that says that the regulations will identify the qualifications of that independent person just to make it clearer?

Mr MACFARLANE: I think that is a good question. Unfortunately, I do not think I am in a position to answer that. That is a question, I think, that the minister could answer.

Hon DONNA FARAGHER: But, at the very least, you are indicating that the qualifications, if I might put it that way, of an appropriate independent person would be specified within the regulations.

[12.40 pm]

Mr MACFARLANE: That is correct. Our understanding is that section 182(13) does give sufficient regulation-making powers to specify what the criteria are for an independent person. I think it is in this morning's set of answers to the questions posed by the committee; we have included some further information about independent persons. So, the purpose of the independent person is to ensure that the votes are tallied by a person who is not connected with the owners or the proponent. This was actually part of recommendations that were contained in a report, which was "Renewing the Compact City". It was a report released, I think it was 2015, by City Futures Research Centre. We have cited that report. We have not put in a copy of it, but we have cited it within the submission that Landgate made on 25 September. I think the policy for the reg-making power in section 182(13) is the regulations would provide further details (a) of the secret ballot process and (b) the requirements for an independent person. I would note that the regulations in New South Wales relating to the equivalent of an independent person, they refer to it as a returning officer, provide details that would actually be useful when we are drafting our regulations for this bill. I refer to regulation 29 of the Strata Schemes Development Regulation 2016.

Hon DONNA FARAGHER: The other question that I have—I believe there are two sections—relates to the issue that has been raised, not today but through other submissions, in so much of the ability for objecting owners to make an application to SAT, as I understand, for effectively a time period when proposals cannot be considered. As you will appreciate, there has been concern raised that

a council of owners will be continually bombarded with proposal requests. Whilst I appreciate there are the three, and there are time periods in that, I understand there are a couple of mechanisms both through the strata company itself to put some limitations on the time periods as to when they can be, I suppose, reconsidered or considered again, but also an individual owner can also seek through SAT an ability to get a period of time where they cannot consider it. I think that is quite important because it is a particular concern that has been raised certainly with me and I think through the submissions as well.

Mr MACFARLANE: Certainly. I direct the committee's attention to page 13 of the submission that Landgate has made to this committee dated 25 September. There may be situations where a person actually controls a majority of votes in a strata company and they use that voting power to prevent other owners from making an ordinary resolution to prohibit termination proposals being submitted to the strata company. I refer here to section 174(2)(b). There is a power of the strata company, by ordinary resolution, to say "for the next 12 months we don't want any termination proposals being served on us". But if you have a majority owner stopping that resolution from being passed, if that happens and the strata company and those owners are then being forced to consider new termination proposals on a regular basis, the owners who are in a minority have two options. Firstly, that owner could seek to obtain an order from SAT to (a) bring an application on behalf of the strata company. They would do that under section 198(1). With that order having been made, that owner can then bring an application on behalf of the strata company to apply to SAT for an order preventing termination proposals—that is outline or full proposals—from being submitted to the strata company for any period. That period could be, for example, up to five years or more. That would then enable those owners to live in peace if they are actually being pursued by a developer.

The second pathway is this: one owner actually has the ability to apply to SAT under section 197 of the bill. They could apply for an order that the ordinary resolution in support of an outline proposal is taken to have not been passed. SAT actually has the power to make that order. This is set out in section 200(2)(n). The basis that SAT may make such an order will depend upon the facts. For example, if those owners are having to consider and vote on yet another full proposal to terminate the scheme when they have previously rejected such a proposal just a few months earlier, when SAT looks at those facts, if that owner can establish that the strata company, in passing the ordinary resolution to permit the outline proposal to proceed, has not actually fulfilled the strata company's objectives. The strata company's objectives are set out under section 119 of the bill. They are, for example, not to make a resolution that is oppressive or unreasonable.

They are the two pathways that exist that stop a person that controls a majority from forcing owners to look at termination proposals over and over again.

Hon DONNA FARAGHER: I suppose at the end of the day it is a determination that would be made by SAT as to whether or not they agree. Simply because an owner puts forward an application to SAT does not mean to say SAT will necessarily agree with that owner.

Mr MACFARLANE: Correct. It will always be on the facts. The policy for that safeguard was actually to ensure that the strata company can stop outline proposals and full proposals. I think we have to remember that in WA there are some schemes that are located in prime redevelopment sites. Owners in those schemes may actually just want to live in the scheme. They may not be faced with spiralling maintenance costs. They may not want to be bothered with terminations. This safeguard was put in there to ensure that those owners will have a useful mechanism to prevent termination proposals from being constantly submitted to owners within such schemes.

Hon DONNA FARAGHER: Who would make the determination in terms of the time period? Can the owner put to SAT, "Look, we don't want to see anything for five years or 10 years"? Obviously SAT

would make a determination, I appreciate, in relation to that. I am presuming that the objecting owner could put to SAT, "Look, we don't want to be bothered for 10 years."

Mr MACFARLANE: Yes, they could.

Hon SIMON O'BRIEN: What about the reverse situation where the hypothetical avaricious pro-development set of owners wanted to stop anyone else putting forward a development proposal to the other owners? I guess they could use their numbers to do that, could they not?

Mr MACFARLANE: They could, but the same standing that minority owners in that circumstance have to apply to the tribunal to overturn the will of the majority. Where the will of the majority is actually operating in an unreasonable and oppressive way, there are pathways where those minority owners can stop that from happening and seek an order. They could, firstly, say, "Okay, we would like SAT to say that the ordinary resolution in support of this lower quality outline proposal should not be passed; secondly, we would seek an order from SAT that they deem that an ordinary resolution has been passed for the strata company to look at this better quality termination proposal."

Hon SIMON O'BRIEN: I have got a couple of questions here. We are trying to balance, obviously, the sort of scenarios that you have been dealing with for quite some time about how on the one hand you might have an owner–occupier who feels disadvantaged and oppressed by forces around them and then there is possibly another point of view that sees people perhaps as recalcitrant people who are just holding out to try and get a bigger slice of whatever purchase price is made available to the whole scheme. There are competing sides to the same coin, which I am sure you are familiar with, and you have been working, as are we, to try to make sure everyone's rights are reasonable and protected. I ask these couple of questions with that very much in mind. I refer to the several case studies that form part of your response today to illustrate the sort of pressures that happen. One of those was the case where someone had complained to your agency, I think, saying that one of the units in their strata scheme had been purchased by a developer of another property over the back or at the side, and in order for that developer to protect, say, the view available and to ensure that their ritzy new development would not be built out and thereby devalued, had purchased an old unit in the scheme in front and was using that as the basis to block any redevelopments. The bill, as I understand it, is part of the mechanism to get around that happening improperly. My question is: what if that obstructive owner installed a residential tenant into that block? Would not that also, under the provisions of the bill before us, restrict the options for redevelopment of the property in front?

[12.50 pm]

Mr MACFARLANE: That is a good question. The bill does not give the tribunal the power to overturn the provisions of the Residential Tenancies Act. So if you have a fixed-term residential tenancy agreement, SAT cannot order that fixed-term residential tenancy agreement to come to an end.

Hon SIMON O'BRIEN: So despite all the safeguards we might try to build into the legislation, of course there is always someone with a dollar incentive who will attempt to find some clever way to get around it. Would it be possible in that situation for such an obstructive owner to set out a long-term residential tenancy arrangement that would frustrate redevelopment options for years and years?

Mr MACFARLANE: Potentially, yes. These reforms were not meant to overturn the Residential Tenancies Act and the way that it relates to fixed-term residential tenancy agreements.

Hon SIMON O'BRIEN: Thanks for that. Possibly that is something that we may wish to contemplate further. My other question relates to Seapines, to go back to that. We have had tabled here a letter

dated 19 February 2016. We will provide a copy of it to you, but you have possibly already seen it. It is addressed to an owner–occupier at Seapines and is signed by D.J. Whiting. It states in part, in reference to an article in the local press —

> … we need to acquire two more units to achieve the percentage where we will be able to acquire the remaining units at a market value for each unit which would be established by the State Administrative Tribunal.
>
> We are still prepared to pay above market value for at least the next two units, if you are prepared to enter into contracts immediately. We encourage you to consider whether you would like to enter into a negotiation to sell your unit/s at an agreed price above market value.

The letter then goes on to say —

> If the legislation is passed and we acquire two more units we will only need to pay the market value established by SAT.

Clearly, that is applying pressure to the recipient of this letter to say you had better sell up now or else you are going to lose money. There have been anecdotal reports of this sort of thing happening, particularly in the Cottesloe area. Can I just ask, what is the response from Landgate to those sorts of tactics, in the context of the bill, of course?

Mr MACFARLANE: This response is not in relation to that letter, to begin with. The issue is that I think there is a misunderstanding among some people about how supposedly easy it will be, when majority control exists in a strata scheme, to force a sale. I actually do not believe that it is as simple as perhaps letters like that indicate. There is a whole set of factors. But assuming that you got through the entire process of preparation of an outline proposal, approval through the ordinary resolution, subdivision approval, service of a full proposal that has a very extensive list of reports that need to be provided, and assuming then that you have got the vote required, you have then got to go to the State Administrative Tribunal and you have got to establish three key things. The first is that you have properly followed the process. For example, if in the full proposal there are misleading statements, that is a breach of that particular requirement. The other test is that each owner is to receive fair market value and be no worse off financially. The final test is to look at the question of justice and equity. The bill itself sets out in several provisions what needs to be considered when the question of justice and equity is asked. First, proposed section 183(9)(c), which is the starting point for the just and equitable test, states —

> … the termination proposal is otherwise just and equitable …

The phrase “otherwise” is included in there because the tribunal is to ask this question independent of whether the process has been followed, and independent of whether each owner is receiving fair market value. In going back to the test of what is just and equitable, the tribunal is to have regard to the interests of the owners of the lots; and, if it is a leasehold scheme, to the interests of the owner of the leasehold scheme, which is essentially the lessor of that scheme. The tribunal is also to have regard to the interests of occupiers of the lots and of the common property. It is to have regard to the interests of registered mortgagees, and also the interests of any other person who has an estate, interest or right over a lot or the common property, where that estate, interest or right is registered or recorded in the register.

In addition to that, proposed section 183(12) states that without limiting the factors that the tribunal can take into account when it is deciding the question of just and equitable, the tribunal must consider any evidence of impropriety in the termination process, including, for example, evidence of proxy votes being exercised invalidly, or votes being affected by undue influence. This letter that

you have cited, Simon, may start to indicate that sort of undue influence, but I am not passing an opinion on that. The next question is whether or not there is evidence of false or misleading information, and whether that is included or omitted from the full termination proposal. A further question is what is the proportion of owners of lots in favour and against in terms of numbers of lots and then in terms of unit entitlement. A third question is what the termination infrastructure report contains and what sorts of options that report has to readily address any of the problems identified in the report. That might be building defects, for example. Further, what sorts of arrangements are being made for the owner of that lot potentially to buy back into the land if it is subdivided again and redeveloped. The final question—this is the key question—is the benefits and the detriments of the termination proposal proceeding or not proceeding for all of those whose interests must be taken into account. If we ask who are those interests that we have to take into account, we go back to proposed section 183(9)(c) for that full list of people.

So I would suggest that just because you get an 80 per cent vote does not mean that a termination is a foregone conclusion, and even paying owners what some people think is fair market value is still not a foregone conclusion that the termination will proceed.

Hon COLIN de GRUSSA: My questions are in relation to the comparison table in the appendix to your submission. I just wondered if you had an opinion on a couple of things. One of those is about the tiered voting system that is used in the Northern Territory. What merit is there in that, and has that been considered at all by the drafters?

[1.00 pm]

Mr MACFARLANE: We did consider a tiered voting proposal. The difficulty with the Northern Territory was that it was tied in to the age of the scheme. You have an issue in that some older schemes are actually very well maintained. Some newer schemes, because of build quality—there is evidence that build quality can drop in certain periods, so some newer schemes actually have serious building defects. We did not particularly think there was merit in looking at the age of scheme. The other issue with age of scheme is that it is quite difficult to define the age of a scheme where you have a strata scheme that was developed in stages. If it is developed in stages that take 12 to 15 years, how do you define the age of the buildings there?

Ms WHITFIELD: I just add that we had considered that quite extensively. If you look at the consultation paper that is on page 1 of the appendices, it has an extract from that. We did include that model of the vote based on the age of building but we changed that in response to stakeholder feedback, as Sean has said, that that is not —

The CHAIR: Can I just check because I was going to follow that up, too. Is this page 97 that refers to the proposal to allow a majority vote for schemes which have 10 or more lots and are at least 15 years old?

Ms WHITFIELD: Sorry, which page?

The CHAIR: It is the consultation paper of 31 October 2014; it is your appendices. It says page 97 but I am not sure whether that is the proper page number.

Mr MACFARLANE: That is the correct reference, yes.

The CHAIR: So that is what you have just referred to in the answer to the honourable member.

Hon COLIN de GRUSSA: Again, in that comparison table was the ability in New South Wales for any person to give a written notice for the collective sale or redevelopment of a strata scheme without having to be an owner. Was that ever considered here?

Mr MACFARLANE: That was considered and feedback that we obtained from stakeholders was that it is more appropriate that a proponent have some sort of stake in the scheme and that stake needs to be that they are an owner of a lot or they have a contract to buy a lot. There is an issue that if you say that anyone can serve a termination proposal, there is a possibility that you would have a sub-industry created of fly-by-night termination proponents serving outline proposals on strata companies. It is important to note that when a strata company receives an outline proposal, they do not have to do anything. They do not have to have a meeting. They do not have to have a vote. It is only when you receive a full proposal that there is a requirement to hold at least one meeting in response to that proposal.

Hon COLIN de GRUSSA: Is there any experience on how that all works in New South Wales?

Mr MACFARLANE: The majority termination provisions have been in operation now for around 14 to 15 months. It was June of last year that it came into operation. The latest information I have from New South Wales is that there were three majority termination proposals. One of those settled before it went to their review body. The review body in New South Wales is the Land and Environment Court. There are, I understand, two matters before the Land and Environment Court. We have pointed out—I think this is set out in one of the final chapters of the submission—that it is interesting when you look at the experience in other jurisdictions. I refer you to page 37 of the submission from Landgate dated 25 September. The experience in other jurisdictions that have majority termination is that majority termination has actually led to an increase in the value of lots in older schemes where there is redevelopment potential. I will give you an example. In Singapore, where majority termination has been in operation for over 18 years, people there, if they hear a developer is sniffing at an old strata scheme, they actually buy lots in it because they know they are going to make a big windfall gain. That is because what happens is when you have sufficient safeguards for a majority termination process that sets out things like fair market value and so forth, what you end up doing is giving some degree of comfort to a developer so that if they make offers to owners, they can actually be generous in the offers. They can be generous because they know that if someone does not take the offer and there is no strong grounds for them not to take the offer, there is a good chance that the matter may end up before the tribunal or with the review body and the review body saying, "Actually, it is a very generous offer and all of your concerns are being addressed", whether it is like-for-like and so forth, and the termination should proceed. We believe that the safeguards for majority termination will protect people that need to be protected, such as vulnerable owners, and that the majority termination process will flush out people such as the example that Hon Simon O'Brien gave earlier where you have a person who has intentionally bought a lot in a scheme with the intention of blocking any further redevelopment of the area because perhaps their building behind will lose views.

Hon DONNA FARAGHER: With respect to the fair market value, can I just clarify, how do we determine fair market value? Is that based on the set of townhouses or whatever it may be as they are—I am presuming that is the case—or can it also include the value of the land and all that it encompasses if you were going to change the number of apartments that might be on there, if you increase it from 10 apartments to 20, so you are going to get better views and all those sorts of things? Does fair market value look at what the proposal may be in the future? I suppose that is the challenge because it might be hypothetical and we might not know that level of detail, or does it simply go on what is the current case—what is the current market value today?

Mr MACFARLANE: It partly looks at the current market value for that lot. It will also take into account that owner's share of the common property. If there is a large portion of the land that is common property, they should be compensated for that. It also must look at this highest and best use. When you look at highest and best use, you look at what is the current planning approval in place for that

scheme—in particular, you would look at the R-coding for that particular site. For example, if you have a scheme where there is only 10 lots and the R-coding says that 100 lots can be put there, then that must be considered as part of the highest and best use consideration when market value is calculated.

Hon DONNA FARAGHER: Okay. So it is considered.

Mr MACFARLANE: Just to reiterate, the fair market value test specifically takes into account the individual financial circumstances of each objecting owner. That is especially so because there is that further requirement that no objecting owner be worse off financially if the termination goes ahead.

Hon DONNA FARAGHER: My final question relates to getting an understanding from Landgate of the type of information that you are anticipating being able to provide to the community in relation to these reforms. Take, for example, the letter that Hon Simon O'Brien has just referred to. If you were to read that, you might think that unless you sign now, you are just going to get market value. As a result of that being read out, you have gone through all the different myriad requirements that are spelt out through this legislation. We as legislators obviously deal with legislation like this—mind you, it is fairly voluminous—but that is part of our role to do that. I think it is fair that people within the community who might come up against this need to have a really good understanding, in commonsense terms, not necessarily legislative terms, as to what their rights are and what the provisions of the act are. I think it is important for us as a committee to get an understanding—I do know that Landgate have already been doing some work in relation to this. But I think it is really important that we know the sort of information that you are intending to be able to provide for the general community in terms of working through this legislation.

[1.10 pm]

Mr MACFARLANE: Certainly. Yes, Landgate has put up on our website since January 2016 around 100 pages detailing all of the elements of the strata reforms and that also includes the Community Titles Bill. The intent is that, after passage of the legislation, a new wave of education is to be rolled out by Landgate and the intent is that we will do that in consultation with industry bodies and community associations to ensure that there is a consistent message put out to the public. Landgate will provide an advice line and information on our website to assist owners when they do receive a termination proposal.

There is an interesting provision that we currently have in the act and I probably wanted to run through this. This is a regulation-making power and I note that it is, once again, something that we may or may not choose to do. Under section 181(5), it provides that "regulations may impose additional requirements about the process required for consideration of a termination proposal" to the strata company. That is when you receive the full proposal. Those regulations could include a requirement that the strata company refer the proposal to, for example, an independent advocate. This particular matter arose as a result of some of the consultation that we had on the question of vulnerable owners. Subject to further consultation, the regulations could specify that a strata company must refer the full proposal to an independent advocate. The regulations might specify how you would define "independent advocate". The independent advocate would then review the full proposal and provide the strata company with an independent assessment of it. They would arrange a briefing session to deliver an independent assessment of that proposal.

The independent advocate could also assess which of the owners within that scheme actually qualify for the additional advice that should be provided under section 190. They could say, "These are the people that we think are vulnerable in accordance with your definition in the regulations." They

could provide initial advice to those vulnerable owners and they could then refer the vulnerable owners, for example, to a panel of specialist advisers so that those vulnerable owners could obtain the support that they need. If the proponent said, "I don't think that person is a vulnerable owner", the independent advocate could represent that vulnerable owner and get an order from SAT saying, "Yes, they are entitled to that additional funding." That is obviously going to take money and the point is that the strata company would be required, under the regulations, to pay the independent advocate. We have the power, under section 189, to require the proponent to pay certain costs to the strata company and we could use the reg-making power under section 189 to say, "The proponent must pay the strata company to pay the independent advocate." I would suggest that this policy ensures that vulnerable owners are properly identified, would have access to advice and representation that is specified in section 190, and I think it would also overcome the problem that Hon Simon O'Brien mentioned earlier where misinformation is being given to owners in particular schemes.

Hon DONNA FARAGHER: Are you saying the independent advocate would be something that could be considered under subsection 13?

Mr MACFARLANE: Sorry, it is under section 181(5), so it is the previous provision. Section 181 itself deals with the consideration of the termination proposal and section 181(5) is a reg-making power that we could use to require the strata company to give the proposal to this independent advocate and to pay the independent advocate. Section 189 would be used to require the proponent to pay the strata company.

Hon DONNA FARAGHER: Why would we not have something which references an independent advocate in the principal act rather than in regulations? Why would we not do that, because it seems to be a fairly commonsense and fairly valuable option for owners? Why would we not reference that in the act itself?

Mr MACFARLANE: There are two things: this particular concept has only arisen as a result of recent consultation on the question of vulnerable owners; secondly, I cannot comment on further amendments.

Hon DONNA FARAGHER: I appreciate that, but in light of what you have said, unless you read the regs, you might not necessarily be aware that that might be an option, if that is ultimately considered as part of the regs. This is still hypothetical —

Mr MACFARLANE: Yes.

Hon DONNA FARAGHER: You are putting to me that it could be considered as part of the regulations.

Mr MACFARLANE: It could. Anything that is in the regulations ultimately should be part of the education material that we do provide to people, so they would be aware of what is in the regulations as well.

Hon DONNA FARAGHER: Sure, but I think an independent advocate is perhaps more than—we might leave it at that.

The CHAIR: Mr Macfarlane and Ms Whitfield, you have been very generous with your time; thank you. I will just read the closing statement. Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any correction should be made because of typographical or transcription errors, please indicate these corrections on the transcript. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. We are on a tight time frame, as we have talked about. I think

we are asking for questions on notice to be back by 1 October. If you could take that on board for us, we would appreciate it. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you very much for coming in.

Hearing concluded at 1.16 pm

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