

**ECONOMICS AND INDUSTRY
STANDING COMMITTEE**

INQUIRY INTO KARRINYUP LAKES LIFESTYLE VILLAGE

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 5 MAY 2008**

SESSION ONE

Members

Mr R.C. Kucera (Chairman)
Mr G.A. Woodhams (Deputy Chairman)
Dr J.M. Edwards
Mr M.P. Murray
Mr A.J. Simpson

Hearing commenced at 10.29 am

BARRON, MR RAYMOND PAUL
Coordinator, Building Approval, City of Stirling,
examined:

GARDNER, MR BRUCE STANLEY
Town Planner, City of Stirling,
examined:

POVEY, MR ROSS
Director, Planning and Development, City of Stirling,
examined:

SNAPE, MR ADRIAN RODNEY
Building Surveyor, City of Stirling,
examined:

WOLKER, MR RAINER ANDREAS
Design Engineer, City of Stirling,
examined:

The CHAIRMAN: Good morning everyone and thank you for coming in this morning. Firstly, for those who do not know me, my name is Bob Kucera. I am the member for Yokine and I also chair the Economics and Industry Standing Committee on behalf of the current Parliament. To my left, Dr Judy Edwards, member for Maylands—

Dr J.M. EDWARDS: Good morning.

The CHAIRMAN: —and Tony Simpson—I always mix this up—the member for Serpentine-Jarrahdale.

Mr A.J. SIMPSON: Do not get used to it, that electorate is about to change names! Good morning.

The CHAIRMAN: To my right we have Lorraine, our principal research officer and Vanessa, our research officer.

This is a public hearing this morning and I welcome you and those present in the public gallery.

Hansard is present this morning and will record everything that is said.

Before we start, I will read through the formal procedural processes.

This committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament.

I have to ask you to respond yes or no to a series of questions, but before we do that, will you please introduce yourselves, starting on my left.

Mr Gregory: Thank you sir. My name is Mark Gregory. As solicitor, I am appearing as counsel assisting the witnesses from the City of Stirling.

Mr Wolker: Rainer Wolker. I am a design engineer at the City of Stirling.

Mr Snape: Adrian Snape. I am a compliance building surveyor with the City of Stirling.

Mr Povey: Ross Povey, director of planning and development at the City of Stirling.

Mr Gardner: Bruce Gardner, senior strategic planner at the City of Stirling.

The CHAIRMAN: It is nice to see you back Bruce. Thank you for coming again.

Mr Barron: Raymond Barron, coordinator of building approvals.

The CHAIRMAN: Thank you, gentlemen. I will go back to the former reading. I need you all to verbally indicate yes or no in response to my questions. Firstly, have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

The Witnesses: Yes.

The CHAIRMAN: Do you have any questions relating to your appearance before the committee today? I am referring to procedural questions.

The Witnesses: No.

The CHAIRMAN: We have received your submission. Did anybody wish to make any amendments to that submission other than what may come up during the normal course of events today?

The Witnesses: No.

The CHAIRMAN: Before we ask any questions, do you wish to make any separate statements in addition to your submission?

Mr Povey: Yes, Mr Chairman. We have an opening statement and Mr Gardner will then provide some further statements about some of the approvals background for the committee's benefit.

The CHAIRMAN: In any case, I was going to ask you to give the committee a thumbnail sketch before we start—please go ahead with your statement.

Mr Povey: Thank you, Mr Chairman.

I thank the chairman, Hon Bob Kucera, member for Yokine, and the members of the inquiry panel for the opportunity to address the committee today. In my role as director of planning and development at the City of Stirling I am responsible for planning approvals, and building licence and development compliant functions. I have been at the City of Stirling since January 2005.

Over the last two years, I have been involved in meetings with residents of the Karrinyup Lakes Lifestyle Village and with your parliamentary colleague, the member for Carine, Katie Hodson-Thomas. Also, I have been involved in separate meetings with the directors of Moss Glades: Mr Eion Martin and Mr Len Wyman, the developers of Karrinyup Lakes Lifestyle Village.

The City of Stirling has now successfully prosecuted Moss Glades in respect to two residential units constructed without a building licence in the Karrinyup Lakes Lifestyle Village. The city is currently respondent to an appeal at the State Administrative Tribunal brought by Moss Glades in respect to a notice served by the city under the Planning and Development Act requiring compliance with the planning approval.

The CHAIRMAN: I will just stop you there for one moment. The committee is aware of the issues before SAT. Members will ask you about the general issues but do not expect or require you to go into issues that are being discussed by SAT. I will pull you up if you stray into that area of discussion because I would prefer not to prejudice a matter before the State Administrative Tribunal. I just wanted to make that clear.

Mr Povey: Thank you, sir. We are aware that the matters in mediation are treated as confidential. However, we are happy to provide the committee with a general overview of those particular matters.

The CHAIRMAN: Thank you.

Mr Povey: This matter continues in mediation at SAT. The city also continues to cooperate fully in an action brought by the residents of the village against Moss Glades relating to the non-existent village clubhouse. This matter is currently being mediated at the State Administrative Tribunal.

Separately, the city is investigating other allegations of non-compliance and departures from planning and building approvals, with a firm view of initiating further legal action against Moss Glades. The City of Stirling is therefore pleased that the Parliament has seen fit to establish this particular inquiry into the Karrinyup Lakes Lifestyle Village and its developer, Moss Glades. The city is keen to assist the inquiry and I am joined by officers from the City of Stirling who will help me answer any of the questions that the committee members may have.

The city has submitted two lever arch files containing a range of statements, documents and information to assist the committee in relation to the planning and building approvals relating to this particular development. Also, included in the files are details of the action taken to date by the city to obtain compliance with these approvals.

To set the scene: the broad purpose of planning and building approvals is to provide a level of protection to the community and to the village occupants by providing standards of amenity and construction that ensure safety and enjoyment. Planning legislation, therefore, is designed to protect the amenity of the community and to ensure the orderly development of land while building legislation is designed to ensure the safety of building occupants through compliance with the Building Code of Australia and associated Australian standards. It is worth noting that planning and building approvals have entirely separate heads of power under state legislation.

At the outset, I advise the committee that the city has become increasingly concerned for residents of the retirement village and the residents of the immediate community in Gwelup as a result of the actions of the directors of Moss Glades, Mr Eion Martin and Mr Len Wyman, the developers of the village. The history of the actions by the directors of Moss Glades in respect to the implementation of, and compliance with, the necessary statutory planning and building approvals can be characterised as generally being obstructionist, uncooperative, tardy, non-compliant, and, in some cases, unlawful. Importantly, it must be noted that Moss Glades, as the owner of lot 36 Gribble Road Gwelup and as the developer of Karrinyup Lakes Lifestyle Village, has the critical statutory responsibility to both obtain and then comply—both during construction and then in the operation of the village—with the planning approval. I would like to emphasise this particular point. It is the fundamental responsibility of the developer of the land. Also, any builder constructing on the site has the statutory responsibility to ensure that they have a valid building licence and that they are building in accordance with that licence. The City of Stirling is the authority responsible for assessing planning and building applications and, if satisfied, issuing these approvals with or without conditions. Mr Gardner will provide further detail in respect to the planning approvals process which dates back to 1999 and 2000. In this instance, the planning approvals process involved a ministerial appeal, following which development approval was granted by the then Minister for Planning. Mr Ray Barron will provide further detail with respect to the building licences.

It should be noted that this development also required the subdivision of lot 36 Gribble Road in Gwelup and that the Western Australia Planning Commission is the authority responsible for the approval of subdivisions. It should also be noted that it is nearly eight years since the planning approval to subdivide lot 36 was granted and that this subdivision has still not been completed by Moss Glades. From enforcement actions undertaken by the city to date, and the further investigations that are continuing, the city has identified instances in this particular retirement village in which the development has not been built in accordance with the approved plans and in which some buildings have been constructed without a building licence. In the city's broad and extensive experience dealing with development approvals, non-compliance of the nature witnessed at Karrinyup Lakes Lifestyle Village is uncommon in the retirement village industry. Most developers of retirement villages are responsible operators—being either church or charitable organisations or experienced private sector operators—who ensure that they build in accordance with the necessary statutory approvals. One must ask the question why it is that Moss Glades, the developer of this particular village, has not been able to meet its normal statutory obligations in respect to planning and building approvals.

[10.40 am]

It is also worth noting that this particular development also required engineering works, including road and drainage works, to be undertaken. The road works to Careniup Avenue have not been undertaken in accordance with the city's requirements. Only recently the drainage works have been partially completed and Mr Rainer Wolker will provide further advice on this matter should the committee ask further questions.

As outlined earlier, noncompliance and unlawful actions by Moss Glades Pty Ltd have required the city to undertake a process of enforcement action via successful prosecution in the courts and also through the serving of a notice issued under the Planning and Development Act. Moss Glades Pty Ltd has continued to take an obstructionist approach to that notice. Instead of complying with the requirements of the notice, it is challenging it via an appeal to the State Administrative Tribunal. The matter at SAT is currently in the process of mediation which, as you alluded to, is confidential under the rules of SAT. Suffice to say, the simple purpose of the city's notice was to require Moss Glades Pty Ltd to comply with the conditions of its planning approval. I stress again that Moss Glades Pty Ltd continues to challenge these requirements instead of acting promptly to comply with them.

The city has demonstrated a strong willingness to assist the residents of the Karrinyup Lakes Lifestyle Village and from my involvement at meetings with the residents of the village the city understands some of the grief and stress that has been caused to them. Indeed, the city needs to act in the interests of both the residents of the village and the residents of the broader City of Stirling community. It is also worth considering that this matter is now impacting upon the broader community. It is the broader community that is bearing the amounting costs of the enforcement action that is required to be taken against Moss Glades Pty Ltd because of noncompliance with statutory approvals.

The CHAIRMAN: Do you have the capacity to recover those costs from Moss Glades Pty Ltd?

Mr Povey: In some cases there is, but we certainly do not have the capacity to recover all our costs.

It is important that we learn from the Karrinyup Lakes Lifestyle Village saga. One of the issues relates to the manner in which the initial planning approval was granted, and Mr Gardner will touch on it in a moment. However, the initiative of the state government to establish the State Administrative Tribunal and essentially remove ministerial appeals is a large step forward. It is unlikely that the lack of detail contained in the planning approval granted under the ministerial approval for this development would be repeated in a SAT process. In addition, the opportunity does not exist for the conditions associated with the approval to be continually challenged by the applicant once they have been finalised in SAT.

Another key area from which we should learn is one that is yet to be addressed by new legislation. However, the city understands the drafting of the new building legislation is now underway.

The CHAIRMAN: On that issue, we would be more than happy to hear your suggestions that would assist in this process. Even though the drafting might be underway, the committee might have the opportunity to influence that drafting.

Mr Povey: One of the suggestions contained in the new legislation is that independent certification of buildings be required during building construction, and that is currently not the case. Independent certification would greatly assist in ensuring that buildings are built in accordance with the building approval. The city requests the committee to do what it can to expedite the passage of the new legislation.

The CHAIRMAN: Do you mean that as each residence is completed or each facility is built there should be a sign off.

Mr Povey: Yes, and by an independent certifier.

The CHAIRMAN: That makes sense.

Dr J.M. EDWARDS: What do you anticipate would be the cost of that?

Mr Povey: Over the life of the development, it would depend on various issues. If it is for a single house it would be in the order of \$1 000 to \$1 500. If it is for a much larger development the cost would be greater.

The CHAIRMAN: The developments that I have been associated with in the past—war widows, RSL in my electorate, and Swan Cottages. Normally that certification would be done en bloc as each stage of the development is completed.

Mr Povey: Yes, that would be the case. In the case of large developments for which there is an experienced team of consultants on board and the development is done in large stages, most of that certification would be relatively easy.

The CHAIRMAN: Is one of the reasons for what has transpired been an ad hoc staged development?

Mr Povey: Yes, very much so. Developments have been undertaken in different parts of the site since the approval was granted in 2000—eight years ago—but the total development is still not complete.

The CHAIRMAN: I understand that there have been two or three changes to the legislation, but currently is there a requirement in the legislation for developers to have a staged plan or a plan that says this is what will occur? Do they have to reach milestones for things like certification?

Mr Povey: In the current planning approval for this development there is no requirement for staged development. It does allude to it in one of the conditions, but essentially it leaves it up the applicant to put forward a staging plan, which could be for the whole development or certain parts of it.

The CHAIRMAN: Would a condition for staged development in the approval process been an advantage in this case?

Mr Povey: It certainly would have been useful, more particularly in terms of some of the amenities that are required by the residents of the village. It would have ensured that they were provided in a timely fashion. I am not as concerned about the individual units, but if they are developed on a certain part of the site and are moved to another area that would make it easier for everybody. In terms of the amenities, yes.

The CHAIRMAN: I go back a couple of stages. In terms of the individual residences, are there issues of noncompliance with individual residences?

Mr Povey: I will defer to Mr Barron or Mr Snape in terms of compliance. Mr Gardner has some information on the planning approval background, which might be of assistance to the committee. I do not know whether you want to touch on that.

The CHAIRMAN: Yes, I do. I have a series of questions that I will come to later.

Dr J.M. EDWARDS: I refer to the idea of independent certification. Is there an issue with skills shortage? Does it mean that there would not be a pool of people who would be competent, available and would not have a conflict of interest to provide the certification?

Mr Povey: The conflict of interest issue can be managed. The issue of a skills shortage, is one that the city deals with everyday. However, there are professionals and, from my understanding of the direction of the legislation, building approvals would move to a private certification model. That would set up a whole new industry sector and probably many people from local government would move into the private sector; therefore, they would be able to then provide the certification service.

The CHAIRMAN: Would a condition attached to the approval be that developers must present certification to the council?

Mr Povey: That is right.

The CHAIRMAN: In your submission, and in fact all the submissions, a number of plans have been mentioned and these differ from the original plan that was presented to the minister in 2000. We were given details of that particular plan. Is that a normal kind of plan that would be submitted in the first stage?

Mr Povey: Perhaps Mr Gardner would be able to provide some background in the approval process.

Mr Gardner: The plan that was submitted to the city contained a reasonable amount of detail, but the plan that was ultimately approved by the minister was an A4 sketch, which is not normal.

The CHAIRMAN: Was that approved at the time by the minister?

Mr Gardner: Yes.

The CHAIRMAN: Was that accepted as a plan?

Mr Gardner: Yes, that was the basis for approval and it was different to the plan that was originally submitted.

The CHAIRMAN: Is a final plan that has been agreed to available?

Mr Gardner: There was a plan ultimately. A number of plans were agreed to. The first plan was approved by the minister and there were subsequent plans. These plans were subsequently amended several times; however, the development has not been built in accordance with any of the plans.

The CHAIRMAN: Therefore, the residents would have difficulty knowing where they are at in terms of the completion of what was originally set out to be achieved. It seems to be a moveable feast.

[10.50 am]

Mr Gardner: The plans would be very different from what was originally envisaged to what has been built on site.

Mr A.J. SIMPSON: Can you just take me back a little. I know nothing about the planning process. I apply for this bit of land to change the use of it, it gets rejected and the minister approves it. At what time do you give approval process? Obviously, once I have the zoning changed on the land, I submit a building plan or some sort of development application. Could you take me through that process step by step. I am a bit confused now.

Mr Gardner: There is a fairly set process about what you are required to submit for a planning application and what the city would require from levels, buildings etc. In this particular case, it was

not a rezoning; it was an AA use that had to be advertised. Because of the submissions received, it was subsequently refused and then it was approved on appeal to the minister. The plans that were originally submitted and the plans that were subsequently approved are totally different.

Mr A.J. SIMPSON: I will take you one step down that track. On 11 September 2000 the city advised Moss Glades that it may have been prepared to issue a building licence prior to subdivision approval, contrary to standard practice, if a legally binding agreement was in place. Why was the city prepared to issue a building licence in this way?

Mr Gardner: I believe there are two separate statutory processes involved — the planning process and the building process.

Mr A.J. SIMPSON: Planning is the actual subdivision layout and the building is the actual buildings.

Mr Povey: Subdivision is a separate process.

Mr A.J. SIMPSON: Why was the city prepared to issue a building licence in this way? As I said, on 11 September 2000 the city advised Moss Glades that it may have been prepared to issue a building licence prior to subdivision approval, contrary to standard practice, if a legally binding agreement was in place. Why would the city be prepared to issue a building licence in this way? Is this normal practice?

Mr Gardner: I believe subsequent to that we got advice that we could not withhold any building licences.

The CHAIRMAN: I come back to the original approvals. This may not have been in place nine years ago. I understand that you now have an aged and dependent persons accommodation policy. Did you have that at that time?

Mr Gardner: At the time we had an aged persons policy. This has now been deleted. The only policy we have is the one that follows the residential design codes.

The CHAIRMAN: So you have gone back to what the state legislation is and you apply those codes rather than have an individual code for the city?

Mr Gardner: Yes.

The CHAIRMAN: Was there any reason for that change?

Mr Gardner: It was probably changed for more uniformity. The residential design codes cover most of the aspects and our policy was probably fairly too detailed.

The CHAIRMAN: When the original applications went in, would that policy have applied to 36 Gribble Road?

Mr Gardner: Yes, it would have.

The CHAIRMAN: Would this have been the document that Moss Glades should have used to make its original application to the city? Would it have been complying with that when it made the original application? I am not asking you to say whether it did comply. Is that what would have been in place at that time?

Mr Gardner: I believe there was a policy in place at the time and it was assessed against that policy.

The CHAIRMAN: The city would have assessed the application against that policy?

Mr Gardner: Correct.

The CHAIRMAN: It obviously would have needed to apply within the terms of that policy. It is a two-way street. If you are making an application for a particular use of a piece of land, one would think you would follow the policy that has been set by the city.

Mr Gardner: Correct. Yes, it was a requirement and conditions were applied to that effect.

The CHAIRMAN: I noticed on 22 August 2000 you asked Moss Glades for two sets of plans and a site feature survey. Was this information simply that which would have been required under that policy or is it broader than that? Was it part of the checklist document?

Mr Gardner: It was part of the checklist document. We needed more information than the A4 sketch that was submitted to be able to assess and impose conditions.

The CHAIRMAN: Was that the time you put 36 conditions on the original application?

Mr Gardner: Yes.

The CHAIRMAN: Did those conditions arise out of a combination of the policy?

Mr Gardner: We needed to ensure compliance with the various conditions that the city had and relate it back to the policy and general planning requirements.

The CHAIRMAN: You have told us why the policy was deleted. Let us say that we have moved on and a developer now wanted to build a retirement village within the city's precinct. If KLLV came to you today and said, "We want to do this on 36 Gribble Road", what would be the current requirements in the processes? What would be different now to what occurred then?

Mr Gardner: We would probably have a lot more detailed submission requirements. We have a checklist now that is fairly extensive. Although there was a checklist at that time, this is more extensive as to what is required.

The CHAIRMAN: If I come up to your front counter and say that I want to build a lifestyle village down the road, would I be given an information package?

Mr Gardner: Correct.

The CHAIRMAN: There would not be any question about someone not knowing what the requirements are?

Mr Gardner: That is right.

The CHAIRMAN: Is it possible for us to get a copy of your current checklist?

Mr Gardner: I have sent that to Loraine.

The CHAIRMAN: We have a checklist.

Mr Gardner: Yes. It is entitled "Planning applications—submission checklist".

The CHAIRMAN: From that they would then need to seek whatever that indicated in terms of information. Is that the information they get?

Mr Gardner: Yes.

The CHAIRMAN: When the original application was made, your view is that a similar checklist would have gone out, though not as detailed?

Mr Gardner: Correct. It is very similar. As I said, what was ultimately approved was an A4 sketch with no detail.

The CHAIRMAN: I will take you on a little further to 11 September 2000. Tony touched on it earlier. The city advised Moss Glades that it may have been prepared to issue a building licence prior to subdivision approval. After reading all the submissions, that seems to be contrary to standard practice if a legally binding agreement was in place. Tony has already alluded to that. You have already answered the question as to why you were prepared to issue a building licence. You did not have much choice once there was a ministerial decision.

Mr Gardner: Correct. There is also a separate statutory process as well. There was a building found on the A4 sketch. That is the planning approval.

The CHAIRMAN: When did you first become aware of construction work at Lot 36 Gribble Road?

Mr Gardner: I would probably have to refer to my file, but a building licence for one display home was issued shortly after planning approval. Work subsequently commenced.

The CHAIRMAN: I have a note here which shows that the first licence was issued to Scott Park Homes on 18 June 2002.

Mr Barron: That is correct.

The CHAIRMAN: A further six licences were issued to Kemmish Nominees on 14 October 2002.

Mr Barron: That was the second application. Subsequent licences were issued after that. Two licences were issued in 2002. The next licence was issued on 28 April 2003 and the one after that was issued on 10 July 2003.

[11.00 am]

The CHAIRMAN: What class of licence was issued for lot 36? What was the type of licence that was issued?

Mr Barron: Do you want to go from the first one?

The CHAIRMAN: Yes, if you could. Did they vary, depending on the —

Mr Barron: Yes, what happened was, there was staged approvals for the units on the site. The first application for—the building application was for the development itself—and I am calling the “development” the units and the clubhouse—was made in March 2006, which was for one unit, which was unit —

Dr J.M. EDWARDS: Sorry, I did not catch the date.

Mr Barron: March 2002. That was for one unit. The second application, which was received on 5 July 2002 and subsequently approved on 14 October 2002, was for six units. The next licence after that was on 10 March 2003, which was approved on 28 April 2003, was for 10 units. That is the way the application process went, and the applicant submitted the application in parts; there was one licence, five licences, 10 licences.

The CHAIRMAN: On 11 September 2000, when the council said it was prepared to issue a building licence there was mention of a legally binding agreement being put in place. That was one of the conditions. Can you explain very quickly to us—for those members that were not here at the original briefing—what you meant by that legally binding agreement and what did it encompass?

Mr Gardner: The legally binding agreement was supposed to encapsulate various conditions relating to the future staging of the development, if applicable, so the development could be done in proper stages, and the ongoing use of all accommodation by aged persons.

The CHAIRMAN: Can I pull you up on that the one: did that agreement say it was either residential or aged care, or was there a specific mention of it being aged care or retirement?

Mr Gardner: Well —

The CHAIRMAN: They did not just get a straight residential —

Mr Gardner: No, no. It was basically aged persons. We can say anyone can live in it over the age of 55. That is what we meant.

The CHAIRMAN: But it was not just a straight residential licence; it was specific to what the requirement —

Mr Gardner: No, it was for an aged persons’ retirement village.

The CHAIRMAN: Thanks.

Mr Gardner: The licence was for the ongoing use of all accommodation by aged persons, and the management details of the local store and medical facilities. The local store and medical facilities were subsequently deleted; and the management of the village as a retirement village by a single management entity.

The CHAIRMAN: Was the legal agreement in place when you issued the building licences?

Mr Gardner: No.

The CHAIRMAN: In that case then, why did the council go ahead and issue the licences if the legal agreement was not in place?

Mr Barron: I think, based on legal advice to the city, you cannot stop a building licence being issued on a planning condition. Although we advised the applicant that we wanted that agreement in place from a planning point of view, from the building licence point of view, under the Miscellaneous Provisions Act there is no provision for us to actually stop the licence. One of the things with the building licence approval is that on the building licence form it actually states that it is the builder's responsibility—because that is who we are issuing the licence to—to ensure that the approval is consistent with the development approval and compliant with any other relevant town planning requirements. The onus is back on the developer to ensure that they are meeting those conditions.

Mr A.J. SIMPSON: So they did not meet them then, because obviously that was the condition on the building licence, and so that builder went ahead and built, not —

Mr Barron: It is not compliant with the town planning approval.

The CHAIRMAN: That raises a real difficulty though, does it not, for the people that then occupy those premises, in that it obviously would have an effect on their lease arrangements and on the legality or validity of what it is they are either purchasing or leasing? Let me explain a little better: as I see it, if the council knew that that was not happening, it would seem to me that even if there is not a legal obligation there, there would have been a moral obligation on the council to at least advise people that were getting involved in this thing that there was a problem there.

Dr J.M. EDWARDS: Can I just ask a question that cuts across that a bit: presumably part of the legal advice to council—I mean I am only guessing—would have been that that there is a right of appeal against the building licences issued under this act, and that if you refuse to issue a licence because you are saying there must be this legally binding agreement in place, legally you cannot do it, and if they appealed they would win it?

Mr Barron: That is correct. That is generally the reason why that is the standard procedure that is operated in local authorities. Local authorities have done that in the past; they have gone to tribunals or to court and it basically is thrown out because you cannot enforce a town planning condition on a building licence, and vice versa.

The CHAIRMAN: How does government correct that then? How shall we correct that? How should that be corrected? It seems to me we are putting people in jeopardy if we are allowing building to go on without compliance in that regard. Is there a way around that?

Mr Gardner: Well, in this —

The CHAIRMAN: You can see the difficulties it is creating for the residents, and is still creating for the residents.

Mr Gardner: In this particular proposal, we actually asked for the legal agreement to be entered into prior to the issue of any of the building licences.

The CHAIRMAN: I am not being critical of council; I think they did the right thing there.

Mr Gardner: But Moss Glades appealed to the minister on conditions, and the condition to enter into the legal agreement prior to the issue of a building licence was subsequently deleted, and there was actually no time limit imposed.

The CHAIRMAN: Okay.

Mr Gardner: We could not enforce it. Even to this day it has still not been entered into.

The CHAIRMAN: Even though you were trying to do the right thing, it was overridden?

Mr Gardner: Correct. By the minister.

Dr J.M. EDWARDS: For clarity, can I check—was that part of an appeal to the Minister for Planning and Infrastructure on planning appeal grounds, rather than an appeal about the building licence?

Mr Gardner: It was an appeal to the minister. They appealed against 13 of the 36 conditions that were imposed.

The CHAIRMAN: Is there a legally binding agreement in place now?

Mr Gardner: No.

The CHAIRMAN: There is still not?

Mr Gardner: No, we are still trying to obtain the legal agreement.

Mr Povey: That is one of the reasons why the city served the notice that is currently being mediated at this tribunal.

The CHAIRMAN: I can understand that. Can I just go back and clarify the type and class of licence. Our understanding is that it is for a retirement village, as it is currently referred to, or a lifestyle village I think is what—what is the specific licence that is issued?

Mr Barron: You can do the planning one and I will do the building one.

Mr Gardner: The planning approval was for an aged persons' retirement village, I believe we termed the development.

Mr Barron: Can I just answer from the building point of view: the building approval and the Building Code of Australia actually defines them in a different way. Planning has a use requirement; the building licence deals with the building itself. In accordance with the Building Code of Australia, the buildings are class 1 buildings, which is basically a dwelling house. What we have got on that site is approval for 52 dwelling houses, plus a clubhouse. Under the BCA—and I think questions will be raised later on about how the buildings were constructed—because they are class 1s, they are just dealt with as single dwellings. The building is not used as an aged care facility, which is a different class of building again and has different requirements. If you can envisage all the actual individual units are, from a building code point of view, single houses on that lot. The clubhouse, obviously, is a different class again, which is what we call a class 9 building, which is a public building because it is a building used in common by a group of people, which are the residents, but each individual unit itself is basically a dwelling house constructed on that lot.

The CHAIRMAN: In terms of compliance then, that would be no different to any other house, any other residence, that would be constructed anywhere else in the city?

[11.10 am]

Mr Barron: That is correct.

The CHAIRMAN: Which does raise some issues, does it not? I notice one of the complaints that came in as part of the submissions was the width of doorways when they were trying to get people out of the building if something had collapsed. I know that normally, if it is a retirement village, there are additional requirements on the width of doorways and things like that. So, if these villages

are to be constructed as lifestyle villages but with the emphasis on the over 55s, and obviously people ageing in place, is that a weakness in the process?

Mr Barron: I think the weakness has been rectified in the fact that the residential design case now requires that aged-person dwellings be built in accordance with AS4299, which is adaptable housing, which is a recognition of the ageing in place and does recognise that there are some modifications to the buildings that need to be undertaken for these types of homes that are being built. Again, the Australian Standard 1429 is a condition of the residential design case, which is a planning condition which is not enforceable under the building licence as such, because the Building Code of Australia does not call up that particular standard. So the way it would get dealt with by council is that the planners would put on a condition or they would ensure that the development would meet that standard before they issued a planning approval. So I think that particular issue has been rectified in legislation by adopting it as a requirement under the residential codes.

The CHAIRMAN: But there is no retrospectivity on that, is there?

Mr Barron: I do not believe so, no.

The CHAIRMAN: So any of the residences that are built subsequent to that it would apply to, but there would be no comeback on the builders in terms of those that were issued prior to that.

Mr Povey: And even in this current planning approval, because in this particular development they have a current planning approval there is no particular comeback.

The CHAIRMAN: Again because that approval was granted before the change of legislation.

Mr Povey: That is right. I think the R-codes were revised back in 2001, which is after this.

The CHAIRMAN: Which is obviously going to create difficulties for those people that are yet to build there in the future.

Mr Povey: Yes. Having said that, given the number of changes on this particular site, the city has requested of Moss Glades a fresh planning application; so the city does have the opportunity, which it will enforce, to put new conditions on that particular application.

The CHAIRMAN: That is right, because that particular approval has lapsed, has it not, or parts of it have?

Mr Povey: They have a current approval in place but they have either departed or are wanting to depart from that approval; so they need to seek a fresh approval

The CHAIRMAN: At what point do you actually check the buildings for compliance?

Mr Barron: Under the current statutory requirements there is no provision for mandatory inspections or a certificate of occupancy, so to speak, for a class 1 dwelling. So our understanding is the issue with the Moss Glades development came to attention after a complaint back in January 2007 and since that time the city has been working through those issues, which is again why the applicant is in appeals at tribunals and why the city has already prosecuted on two occasions already for non-compliance. Some of the issues on the site regarding the developer are that he has built seven units without the approval of the city, which means the city has not had any control on those seven particular units, and based on information provided by a private building surveying company, it would appear that 12 other units have been built not in accordance with the approval of the city. So generally you can say that there have been some issues on site where the developer has gone and done his own thing in regard to orientation and location of buildings on that site, which the city was not aware of. So in the current environment the only mechanism, or the only way that we actually found out that there was an issue on that site was based on a single complaint. When we went out on site we found all these deviations of the plans from the approval. I mean, when I talk about deviations I talk about deleting units, orientating units which were meant to be facing the roads into the site, which creates some design issues on the particular site. We have requested that for the units

they have constructed that they put in the letter of determination; and part of that process is that we look at those issues, which bits are not compliant with the development, do they meet our standards, do they not meet our standards? If they do not, then the city has to consider what action it wishes to take. If a builder or a developer goes along to build seven units without the approval of the city and they are not compliant with the town planning requirements and are not compliant with building requirements, the next position is: okay, what action does the city take in regard to the overall development? Does it mean pulling down half of those units to make them compliant, which would be a big question that would need to be asked by the city of how far they wish to take this matter?

The CHAIRMAN: And the majority of those would already be leased.

Mr Barron: Potentially, yes. I just have a question for Adrian: how many units are currently vacated, about four or five?

Mr Snape: No, there are seven.

Mr Barron: About seven that are not occupied?

Mr Snape: Seven that are not occupied are the ones that we have actually caught them building without building licences.

The CHAIRMAN: And I understand you have nine letters of determination in place at the moment.

Mr Snape: Yes.

The CHAIRMAN: Are there other letters in addition to that that have already been dealt with?

Mr Snape: No, we have not dealt with any letter of determination at all yet. They are in pause mode at the moment pending the outcome of the new planning application.

The CHAIRMAN: Okay. Are there any other issues that have been resolved prior to that in terms of non-compliance?

Mr Snape: No, not in a building sense.

The CHAIRMAN: Given what has happened now, are there likely to be more?

Mr Snape: There will be, yes.

The CHAIRMAN: There will be?

Mr Snape: Yes. What Ray has mentioned about on the northern elevation of the property, there were originally 14 units marked and they built 12 units instead, and seven of those units are facing the wrong direction, and the footprints of those dwellings themselves have not been inspected to see whether they are compliant with any of the applications that were granted before.

The CHAIRMAN: So potentially the worst-case scenario is the city could say these have got to come down and be rebuilt.

Mr Snape: Not necessarily.

The CHAIRMAN: Potentially.

Mr Snape: Potentially, yes.

The CHAIRMAN: That is what I said: the worst-case scenario.

Mr Snape: The worst case, yes.

Dr J.M. EDWARDS: Is there any suggestion that residents are at risk, from the point of view if something has not complied with lawful instructions? The city clearly has some sort of duty of care.

Mr Barron: Yes.

Dr J.M. EDWARDS: I mean, there is no risk from electrical malfunction or no environmental risk from sewerage not properly connected?

Mr Barron: I think there may be some risk with some of the buildings in regard to fire separation, and part of our letter of determination process is to get a private building surveying company in to inspect the works. The issue we have with the letters of determination is council cannot actually issue a retrospective approval for what is there. So the process that the council goes through is that they will determine through other avenues; ie, for the location of buildings we get a licensed land surveyor to indicate where it is actually physically on the property. We asked for a private building surveying company to inspect the works to determine whether or not it is compliant with the Building Code. At this stage we have found that the report that has been submitted is deficient of information and we will be going back to the developers and the company to advise them of that fact. They have given us a report but a lot of the critical information in regard to fire separation we do not believe has been addressed. The accessibility issue will be an interesting one that we will have to tackle as well at some stage.

The CHAIRMAN: I will not ask you for a legal opinion, but obviously that creates issues, I suppose, as Dr Edwards has said, if there was an issue down the track. How do you move, now knowing that—Ross for instance—now the shire is aware of it? If there are issues of safety, how does the council now deal with that?

Mr Povey: There are two things. One, bearing in mind that the city does not have any direct relationship with the residents; we deal with the —

The CHAIRMAN: They are not even ratepayers, are they, technically, I suppose?

[11.20 am]

Mr Povey: No. My understanding is that the ratepayer is actually the owner of the land and so the residents themselves, as I understand it, are not directly ratepayers of the city.

However, in terms of dealing with it, the properties are inspected. If it is found that they can be brought into compliance, we will ensure that that is done. We will also look at further prosecution action, as outlined in my initial statement.

The CHAIRMAN: It is only my opinion, from what has been said, that the residents are not ratepayers. Do they have a claim to be ratepayers because they are lessees?

Mr Povey: I am not sure in terms of the requirements of the Local Government Act. They are certainly electors of the city. I do not know about the technicalities in terms of them paying rates.

The CHAIRMAN: The city's submission alluded to the report of the private building survey company. The submission states that a further row of units does not appear to have been constructed. What areas of non-compliance on the part of Moss Glades have been noted? What are the kinds of things that have been noted as non-compliant?

Mr Snape: We have inspected the seven main dwellings along the lines that they have been built. The 12 on the northern elevation appear to have been built without a building licence. They are not compliant because they were constructed without a building licence.

Dr J.M. EDWARDS: And then there is the fire issue.

Mr Barron: One issue is the distances between the buildings for fire separation. There is also the issue of the relativity of the current adaptability of housing standards for licences that have not been issued and whether or not the city puts that onus back on the developer to ensure that they comply with the current standards. As you said before, you are looking at extra width doors and access to toilet/shower facilities. The city has to determine whether that needs to occur. Because there are so many discrepancies from the approval, and because we are asking for a new approval, we will be looking at enforcing the current requirements on the ones that are not built. What we do with the others, the letters of determination will be a decision of the city. Those types of issues will have to be addressed by the city at some stage.

Dr J.M. EDWARDS: What sort of parameters did the private building survey company have the capacity to drill down to?

Mr Barron: The private building surveying company was employed by Moss Glades the developer. Again, this is part of our letter of determination process. It has to demonstrate to us that the buildings are compliant. They will provide a report and if we find that things are deficient, we will go back to it and tell it that certain things are deficient and that we want more information on X, Y and Z so that we can determine whether the building will be compliant. The original report referred to Building Code requirements. It also referred to some of the planning requirements, the planning approval and the residential design codes. They were addressed in that report.

The CHAIRMAN: We have talked about a worst-case scenario. What actions are open to you with regards to the seven for which you have issued a letter of determination? What can the council do to ensure compliance?

Mr Barron: In the first instance the council can take action on the seven that were built without approval. If we find that the buildings are compliant, we may decide to issue a letter of determination, which is an acknowledgement that the building has been built and that it is compliant. The council may take action if they are not built in accordance with standards. We can take action to have them modified so that they conform to current standards. All those actions will need to be dealt with on an individual basis depending on the issues. Obviously, the city could prosecute. It could issue approval under a letter of determination, subject to them being compliant. It could prosecute for building without approvals and notices can be served to ensure that the buildings are brought into conformity.

The CHAIRMAN: The one complaint that I picked up in the submission was about ambulance officers not being able to get into a residence with a stretcher. That would be a massive undertaking if those houses did not comply.

Mr Barron: If the buildings are brought up to the current standard—AS4299—there will be a substantial number of defects with the current buildings if we spread that requirement.

The CHAIRMAN: I am probably being a conspiracy theorist. If those buildings do not necessarily comply—we are talking about two-thirds of the total development having been built—

Mr Barron: That is correct

The CHAIRMAN: —what then happens to the usage zoning? Let us say that they are not able to change certain things but the city did not want to knock it down, is there an avenue to make it a normal residential subdivision?

Mr Povey: The short answer is no. The development has approval to be a retirement village. We need to go back to the initial principle when the planning approval was granted, which has the requirement that it has to meet certain standards for aged people. The city's view at the time was that the particular design did that. It was only subsequently that these adaptable housing standards have come into play. To say that the current development does not comply is true to some extent. It does not comply with current requirements, but we must bear in mind that this approval was granted in 1999-2000 when those standards did not apply and when the city did not have the same strict view about adaptable housing development. We are not at a point at which we can say that those particular houses are not compliant with the current requirements in planning approval. The issue of the use for retirement living not being suitable does not arise.

The CHAIRMAN: That is understandable. So there is no chance of it being rezoned as normal residential.

Mr Povey: No.

The CHAIRMAN: That would have obvious implications. I do not want to be a conspiracy theorist. You mentioned the issue of retrospectivity. It does not apply if it did not apply at the time.

Mr Povey: That is right.

The CHAIRMAN: The fact that nowadays we say that the corridors have to be half a metre wider is an issue that the residents have to deal with.

Mr Povey: Until a fresh planning application is made and the city can treat that and put fresh conditions on it.

The CHAIRMAN: That will still not apply to the houses that have been built.

Mr Povey: Not the current ones.

The CHAIRMAN: What is there is there; what you see is what you get.

Mr Povey: That is right.

The CHAIRMAN: When do you expect to receive an assessment on the current letters of determination? I should go back one. Are those matters before SAT?

Mr Povey: The matters in relation to the seven letters of determination?

The CHAIRMAN: Yes.

Mr Povey: No, they are not before SAT.

The CHAIRMAN: When do you expect to complete an assessment on those?

Mr Barron: The letter of determination is indirectly involved with SAT because we are asking for a fresh planning approval. At this stage the city is not prepared to issue any more licences until that matter has been resolved in the correct forum. Indirectly, it is held up because we are waiting for advice and for a decision to be made from these appeals.

The CHAIRMAN: In relation to those letters of determination, which have been served to Moss Glades, has Moss Glades answered or has that also become part of the SAT process?

Mr Barron: It has made application, which is what the letters of determination are. We are going through the process of asking for further information for clarification. Until such time that we determine whether we are going to ask for a new planning approval it is in limbo, because we do not know whether or not we will enforce current conditions or whether we will stay with the original conditions.

Because they have been built without approval, I would say that they may fall out of the requirements of the old planning approval.

[11.30 am]

Mr Povey: Perhaps for the record, just to be clear, the city has asked for a new planning approval to be submitted for the development. We are still waiting for that submission to be received. In terms of the process for a letter of determination, essentially what the city requests when we discover unauthorised building work on this site or any other site, is a whole series of information: building plans, engineering certification, private certification from a private building certifier—those sorts of things. The city then takes that information, as Mr Barron has indicated, and determines whether the application complies with the building code. As Mr Barron indicated, we do not have the legal capacity to issue a retrospective building licence, but we then issue a letter of determination advising the applicant that its development, although it is built, does in fact comply with the building code.

The CHAIRMAN: In all of these issues, you actually deal with the developers.

Mr Povey: Yes.

The CHAIRMAN: So what is the involvement of the people who live in the houses? What comeback do they have? It obviously puts them in an awful position. If you are not issuing building licences and these people are not applying for building licences, as I notice it has already done, it raises the question of the validity of their leases and their security generally.

Mr Povey: Yes; that, unfortunately, is not an area in which the city is involved. There are essentially three parties, and they are not all related parties in this particular instance. The city obviously has an approval and compliance enforcement role directly with the developer. However, it does not have a direct relationship with the residents of the village. The residents of the village have a direct relationship with the developer. The city, essentially, has tried to work with residents of the village in dealing with their complaints in making sure that we undertake appropriate compliance and enforcement roles, and to assist the residents of the village in bringing the developers to deliver on what they had promised in terms of the clubhouse.

The CHAIRMAN: Make them accountable.

Mr Povey: Yes.

The CHAIRMAN: You are doing that essentially out of a moral obligation rather than a legal obligation?

Mr Povey: We have a statutory obligation to ensure that when we are aware of non-compliance with the approvals we grant, that those things are addressed.

The CHAIRMAN: I see. Again, is there a weakness there? This is a different kind of zoning from what one would normally get in a residential subdivision.

Mr Povey: Yes, but the same principles apply. If someone goes off and builds something different from what has been approved, the city takes exactly the same action. Yes, a greater number of people are affected and they are at a stage in their lives when they do not need these issues. Nobody needs these sorts of issues. Elderly people in particular do not need these issues to be dealt with through legal processes, but the same process would apply for any other development.

The CHAIRMAN: I suppose the one good thing out of all this is that it is a great learning curve to make sure it does not happen with other areas.

Mr Povey: Yes, potentially, but as I think said at the beginning —

The CHAIRMAN: That is cold comfort for the residents.

Mr Povey: It is. By and large, most aged-care developers are generally responsible. This is a particularly unique and sad case.

The CHAIRMAN: You talked about some of the other approvals that were being applied for. In the new subdivision application in December 2007 mention was made of acid sulfate soils, I think, and there was an acknowledgement by the WA Planning Commission in regards to that. We understand at that stage the first approval had lapsed.

Mr Povey: Subdivision approval, yes.

The CHAIRMAN: All right. Evidence to the committee suggested the city required the removal of peat from the site prior to the issue of building licences, and there seems to have been a great deal of confusion and concern about that particular issue. Specifically in relation to what should have been done on site at the commencement of the development, what should have happened on the site at that time? If it was an ideal situation and there was a responsible arrangement between everyone, what should have happened?

Mr Povey: Normally what happens, it would be dealt with at either the subdivision stage or prior to the issue of building licences. A geotechnical report is provided that details the soil and ground conditions. If there is any existence of acid sulfate soils, peat or other materials, the developer must put in place a remediation plan which, commonly in this area, involves the digging out and removal of that material and replacing it with clean fill.

The CHAIRMAN: As has happened along the freeway.

Mr Povey: Yes, that has occurred on a number of sites. That is what should have happened. My understanding is that the city did in fact receive a geotechnical report prior to the issue of the building licences.

The CHAIRMAN: Have these particular developers deviated from that at all?

Mr Povey: I am not aware of that.

The CHAIRMAN: The question obviously for the committee is: are those houses now sitting on soil that they should not be sitting on?

Mr Gardner: There are two different soil classification types on the site. The geotech was submitted to the city. The units closer to the swamp area must have thicker slabs and footings than what would be normally accepted.

The CHAIRMAN: Has that been done?

Mr Barron: Under the building licences, as Mr Gardner said, there are two actual classifications on that site. One is an A site, which is stable sandy soils; the other one is what we call an S site, which is slightly reactive soil, and that means it has a little bit of clay in it—it does have a little bit of movement. The building licence would have been issued to each individual lot based on the site classification, so there would have been two different types of footing details. From a constructions point of view, there would have been different footing and possibly different slab details, and there may have been some extra reinforcing in the brickwork, which is generally the type of things we would see in the construction process for the two different type sites.

The CHAIRMAN: Are we comfortable now that the houses have appropriate foundations for this type of land?

Mr Barron: The building licences would have indicated the different types of footings required for the sites and they would have been given approval. Obviously, without the mandatory inspection, there is no —

Dr J.M. EDWARDS: Is there any suggestion that, when they have a building licence they may not have built on the exact bit of the land?

Mr Barron: That is possible. The general contour of the different classifications is like a line on a map. There could be some that may be in an incorrect position overlapping the boundary between one and the other. Generally, when we have that type of situation, a developer uses the higher classification not the lower classification, but there maybe that instance, yes.

The CHAIRMAN: In terms of alignment, I suppose it is one single development is it not? Although the subdivision plan shows units, the developer is still developing only one block is it not? Is the alignment an issue?

Mr Barron: Yes, given where the units are on the site, because of where the acid sulfate soils and site classification are, it cuts through the site in certain areas. The alignment may be critical in some of those —

The CHAIRMAN: Some of the houses may be sitting on soil they should not be sitting on?

Mr Barron: That is correct, yes.

The CHAIRMAN: That affects the owners rather than the lessees, does it not other than the fact that it might need to be —

Mr Barron: Rectified at a later date.

The CHAIRMAN: Exactly. I want to pick up a couple of quick issues raise individually in some of the submissions; for instance, one is that inappropriate fill has been used on the site. No technical details came with this in the submission? Do you have any knowledge of that?

Mr Povey: No.

Mr Gardner: Other than way back, there were certain problems with land operations that had been carried out without approval regarding some earth works. That goes way back, but not to really affect the development.

The CHAIRMAN: The difficulty is the nature of the land movement as opposed to what actually went into it?

Mr Wolker: The geotechnical report basically is provided by an independent geotechnical engineer, and he determines the classification of the soils on that site. So, based on probes and that sort of thing they carried out throughout the site, that is what they determined the reported on.

<008> M/C

The CHAIRMAN: That report is with council?

Mr Wolker: Yes, that was issued to council prior to the building licences.

The CHAIRMAN: We have copies of that, I think. Thank you; you gave us copies of that, sorry. There has been a fair bit of reading over the past few weekends! Another issue has been raised by residents and people off-site concerning problems with dust from the site. I notice in your submission that the city acknowledged that it had put some sprinklers in, but then simply removed them. Is this still an ongoing problem in terms of dust and issues with —

Mr Snape: No, not that we know of.

The CHAIRMAN: Not that you know of. How do you enforce dust control measures on these kinds of sites? Is there a special way of doing it?

Mr Snape: A health officer would normally visit the site, but if he does not see anything on the day he visits, he cannot take any action.

The CHAIRMAN: What about if he gets complaints?

Mr Snape: This would happen following complaints. If he does not actually sight the dust, he cannot take any action.

The CHAIRMAN: I will just move on quickly if I may. Road building compliance was mentioned earlier. I think there are issues to do with Careniup Avenue at the intersection with Agnew Loop. That has clearly been controversial and problematic, not least because Moss Glades appears to have changed the planned roundabouts and traffic islands. We have a substantial number of submissions that refer to this particular matter, including submissions from members of the local community, not the village community itself. In January 2004 the minister extended the time for the developer's compliance in relation to the completion of Careniup Avenue to 10 April 2004, and through 2006-07. I notice there was a pile of correspondence entered into in relation to this issue. The city issued a written direction to Moss Glades in January 2007, ordering it to build the road. Apparently Careniup Avenue was not built to plan, and was constructed without the city's supervision. The city advised a Gwelup resident that it had requested from Moss Glades quality control documents in relation to the road construction. Two questions on this: were these documents provided to the city as requested? Has the city been given those documents?

Mr Wolker: Yes, our operations people received the quality control on the road construction.

The CHAIRMAN: Did it meet the proper standards?

Mr Wolker: Yes. The intersection of Careniup Avenue and Agnew Loop still needs to be rectified.

The CHAIRMAN: What is the current situation with that?

Mr Wolker: It has been an ongoing saga from when Moss Glades actually constructed it, but basically, when we received the as-constructed drawings from Moss Glades—if the committee needs the dates, I can probably refer to my notes; it has probably been going on for at least a couple of years—we advised Moss Glades that what it had constructed did not comply with the approved

plans. If I can just go back a little: in early 2003, we tried to work together with Moss Glades to actually produce appropriate plans for the construction of that road. For more than four months we provided Moss Glades with examples, assistance and help to actually get the documentation required to provide some sort of approval on that road. In the end, we basically did not have any resolution at all. The city then actually provided the design and the drawings so that we could get Moss Glades to build it. Originally we provided a design that did not have traffic islands because obviously it was not required to provide any of those based on the original approval provided by the minister. We provided Moss Glades with the drawings and it then requested that, because the project was an aged care facility, it would like to install some traffic islands. We then revised the design and provided it to Moss Glades. Once we had provided it with the design, Moss Glades said that it now wanted to provide a roundabout because there were a lot of aged people who wanted to cross the road and a roundabout would slow the traffic. We said "No problems," and provided a design for that as well.

The CHAIRMAN: Every time these changes are put to you, Moss Glades does not get on and do the job?

Mr Wolker: No, and at the time we believed it was just a stalling tactic by the developer. However, because it is quite a critical link—it basically cuts that subdivision in half—the city tried to work together with the developer to actually get something in place that it could build.

The CHAIRMAN: So you gave it the benefit of the doubt? You thought it had the residents' best interests at heart?

Mr Wolker: At the time there were people living there, yes. We were also getting a lot of complaints from people obviously wanting the link open. It is not a process we normally do—providing drawings for developers—but it has been a very difficult —

The CHAIRMAN: How will the city resolve this?

Mr Wolker: At this stage there is no current subdivision approval, and even under the normal subdivision process, the way the WAPC approval is, the city is only there to provide advice to an applicant. It does not actually say that the applicant has to get our approval, or even our approval for what is constructed. If Moss Glades wanted to, it could go directly to the WAPC and get it to clear the condition and override us. At the time, we noticed that the road had not been constructed in accordance with the approved plans because Moss Glades had not built the roundabout, but even if it had built the intersection with the islands correctly, we probably would have cleared that condition on the subdivision. However, it actually constructed one of the islands at one and a half metres, which is correct, and the other island at two metres, so that if a vehicle drove through, it would clip the island on the departure side. We said to Moss Glades that it had to fix that. Moss Glades then went and got a traffic report from a non-qualified person and said, "This person says it's all right." We then said, "This person is not qualified to make those assessments." Moss Glades then got an accredited person to provide a safety audit on that intersection. The audit, however, did not actually follow proper guidelines set out in the audit report. It also made the assumption that because nobody had hit the kerb, it must be safe, and that sort of thing. The city then commissioned its own safety audit and relayed all the issues raised in that audit back to the developer. At this stage it still has not been resolved.

The CHAIRMAN: If I can come back to the original question, Ross, how would the city resolve it?

Mr Povey: That is one of the matters that is currently being mediated as part of the mediation at the tribunal.

The CHAIRMAN: Thank you for that. If I can come back to the legal agreement of November 2002, we have probably answered most of the questions already, but there are a couple of things I would like to clarify, if I could, on behalf of the committee. In November 2002 the council agreed that the development could be construed as substantially commenced, and the city's letter to Moss

Glades stated that compliance with the approval, including the legal agreement, would be required before occupation. You said earlier that that has not yet been signed. Given that the residents are living in KLLV, what is the city's position in relation to that?

Mr Povey: That is another one of the matters currently before the tribunal.

The CHAIRMAN: Were there any changes to the condition to that particular legal agreement as a result of the fact that people had moved in? Did you make any —

Mr Povey: No, there have not been any substantive changes made because of the fact that people have moved in. I think one of the aspects that Mr Gardner outlined earlier, where there probably has been a change, is the nature of some of the facilities to be contained within the clubhouse. I think it was originally proposed that there would be a small shop and some medical suites. I think the shop is now no longer to be developed, but the medical suites will now be a sort of consulting room that professionals can use when they visit the site. That is probably really the only substantive change proposed in the legal agreement.

The CHAIRMAN: I have to say, given my time as health minister, I was wondering where they would get the doctors from! Never mind. The committee has also read extensive correspondence between the city, the developers and their respective lawyers regarding the development of the required legal agreement. The current status is that it is still in limbo?

Mr Povey: Yes.

The CHAIRMAN: Do you have any sense of when the agreement will be completed and signed?

Mr Povey: The process, in terms of the tribunal, is essentially that if the parties are making progress at mediation, then some progress has been made. It has been very slow. If we continue to make some progress at mediation, the city will continue to be willing to mediate and have these matters resolved. If not, the city will simply withdraw from the mediation and put this matter through to a hearing of the tribunal to have the matter determined.

[11.50 am]

I have got to say that we have expended now over a year in mediation. The city has been concerned about the progress of the matter and we will certainly be considering our position further in terms of listing the matter for hearing. That is not going to ultimately resolve the matter, unless Moss Glades determines it is going to comply, because ultimately all that will potentially be found is that it has not met the requirements of the notice.

The CHAIRMAN: Without going into the SAT issues, it is a little bit out of left field, but in terms of the relationship between management and the residents, there is no formal role that the city can adopt, is there, other than trying its best, I suppose?

Mr Povey: No, apart from continuing to liaise—again it is not formal—with the residents and understand what is going on at the village and where unauthorised development is occurring and have that reported to us, primarily by residents and people living around the village, there is no formal role the city would have in dealing with the residents.

The CHAIRMAN: I ask that question really from personal experience of being involved with boards of aged care homes, but generally there is some capacity to communicate between the parties. You do not see anything in the codes or the policies that you adopt that indicates you have a role?

Mr Povey: No, in this case, this is a private village. The only role that the city has had recently is in relation to the other matter that the residents have brought in at the tribunal and where the city, as well as I think DOCEP, has been involved in that particular matter.

The CHAIRMAN: I will just move on very quickly, and I know this is before SAT, and this is in relation to the clubhouse, which seems to sort of grow and diminish and change; in fact, even in the

original documentation that we were provided with by both the residents and yourselves, there seem to be variations of the clubhouse right from the outset about what it was designed for. Was that part of the overall approval process? Would you have taken that into account when the original proposition was put to the council that this was going to be a lifestyle village?

Mr Povey: I imagine so. I was not at the council at the time, but I imagine that would be a normal consideration, the amenity that is provided on the site. It is not just a group of houses; there is actually some amenity for the residents. Mr Gardner might be able to —

Mr Gardner: Yes, we certainly looked at that and we certainly support that type of facility in aged persons developments, even though it was ultimately refused and subsequently approved. Some of the supporting amenities were obviously subsequently deleted on the minister's approval.

The CHAIRMAN: What is the current situation with the clubhouse? Do you understand what the issues are now currently with it and where is the council at with it?

Mr Gardner: Initially, if the legal agreement had been entered into originally, we would have expected the clubhouse to be built within the first stage of the development. However, the requirement to enter into the legal agreement prior to the issue of a building licence was deleted, so there is no legal agreement to require it. Even though Moss Glades signed certain agreements stating it would be built within the first 29 units or within the first stage, it now advises that it is one continuous stage taking many years.

The CHAIRMAN: The committee notes the clubhouse has had one lapsed building licence. There is a letter of determination, I understand, issued in February of this year.

Mr Barron: No, the current status with the building application is that they have commenced work on the clubhouse without the approval from the local authority, so that is a letter of determination. They have put in a second application for the works they have partly constructed. The other part they have actually put in a building licence for, and is one of the licences that are held basically pending until such time as these other template issues have been resolved.

The CHAIRMAN: So they still do not have a current licence.

Mr Barron: That is correct.

Mr Povey: That is correct. There is no current approval for the clubhouse. The city is looking at the client's issues in terms of what has been built to date, and potentially some further prosecution in that regard, and the city is working with the residents in the tribunal in terms of the action they have brought against Moss Glades on that matter. We have invited Moss Glades to submit a fresh planning application in respect of the clubhouse if it wants to make any changes.

The CHAIRMAN: It is a matter of public record, I think, that Mr Martin was a councillor at the City of Stirling at some stage during the early stages anyway of this development. One of the pieces of evidence that have been presented to the committee was that Mr Martin, whilst he was councillor, used City of Stirling staff to visit and check on his site and neighbouring sites at the time. Did the city follow up at all on the concerns that were raised in relation to that matter, would you be aware?

Mr Povey: I am not aware of the matter, but Mr Gardner, I do not know —

Mr Gardner: No, I am unaware of any undue kinds of inspections in that matter.

The CHAIRMAN: I might get Loraine to follow up with you on that, if I could. It was in one of the submissions that came in—I think submission 33. Out of session we might just do a follow up on that and see, just to try to put it to bed or fix it. We talked about them being ratepayers. There is only one lot involved on the site, so there are rates paid on only one lot.

Mr Povey: That is my understanding. Again, we can confirm that to you, if you like.

The CHAIRMAN: If you could. What would be the normal situation there, Ross, would it be that Moss Glades would then divide the rateable values between the various residents?

Mr Povey: I imagine so. Again, that is not something that the city necessarily would be involved in —

The CHAIRMAN: I realise that.

Mr Povey: — but I suspect so, yes.

The CHAIRMAN: We can put that question to Moss Glades anyway, but if you could give us some information on that—

Mr Povey: Yes.

The CHAIRMAN: There are various issues that have come in through the submissions that may touch on other matters. The city imposed some additional conditions on subdivisions by Moss Glades that were outside the scope of the ministerial approval. That would be the approval that came after the 36 original conditions. There were two in particular—Moss Glades was to install a stormwater drain or face refusal by the city to clear the subdivision. I will just put to you whether or not that was the case. Did you ask it to put extra storm drains in? Was it one of the conditions that were applied subsequently?

Mr Povey: My understanding is in terms of the subdivision, again the conditions on that were imposed by the Western Australian Planning Commission. That required an easement to be granted in favour of the city for drainage. The question arose in terms of the width of that easement and if development was to take place prior to drainage being installed, then the width of the easement would need to be wider to enable the city to install that drainage at a future time. The width of the easement we are talking about was in the order of two metres, and the city has since negotiated with Moss Glades for that drainage to be installed.

The CHAIRMAN: That kind of additional condition would be simply part of the normal subdivision process?

Mr Povey: It is a normal, standard subdivision.

The CHAIRMAN: It is nothing out of left field. It would not be somebody within council perhaps being vindictive or picking on somebody?

Mr Wolker: The city actually wrote to the minister to get clarification on the drainage condition, because Moss Glades argued that it was not a condition, and the minister basically confirmed that, yes, the drainage was a development condition, not a subdivision condition, and, therefore, it had to construct the drainage as part of the development.

[12 noon]

The CHAIRMAN: Would people be able to put an interpretation on that that it would favour one party or another, or is that just part of the normal planning process?

Mr Wolker: With the normal subdivision process, obviously —

The CHAIRMAN: There are winners and losers.

Mr Wolker: Yes. Where there is existing drainage infrastructure or required drainage infrastructure, the developer of that parcel of land actually provides that drainage through the site; then as somebody develops further up from that, they provide the drainage for that, and vice versa. In the normal subdivision process, it is normally a subdivision condition. The city actually required the drainage of this lot and the low point in Gribble Road as part of the subdivision, but the Western Australian Planning Commission did not put that condition on.

The CHAIRMAN: During any of this process, have actions been taken individually against council members, or have threats been made that action would be taken individually against council members?

Mr Povey: Do you mean councillors or council officers?

The CHAIRMAN: Council officers.

Mr Povey: I am not aware of any particular threats, no.

Mr Gardner: They said they had taped everything I have ever said to them and they would use it against me. I said, "Do what you like!"

The CHAIRMAN: I had 35 years of that; I know what that feels like! Obviously any legal fees that arise involving officers and the council would be normally budgeted for by council—that would be part of your normal budget process?

Mr Povey: If action was taken by a third party against officers in the course of their duties—where they were conducting their duties in good faith and as part of their role for the city—the city has a policy that it will support them.

The CHAIRMAN: There would be nothing unusual in that?

Mr Povey: No.

Dr J.M. EDWARDS: Is it possible to receive further information about whether or not the city has expended any money defending a council officer to do with this issue?

Mr Povey: The city has not expended any money. I can answer that now. There has been, as far as I am aware, no action taken by Moss Glades or any other party in relation to this against any officer.

Mr A.J. SIMPSON: Excuse me, Chairman; I have to leave at this point.

The CHAIRMAN: Of course. I do not think I have been on an inquiry that has received so many submissions. The difficulty we have is that a range of issues have been raised by all parties. I am trying to be diplomatic in terms of putting some of the questions without adding or subtracting from the credence of any of the stuff that has come in. Where do we go from here with this particular development? What does Moss Glades need to do to allow the development to continue, firstly, and, secondly, to be completed to the city's satisfaction? What needs to happen here?

Mr Povey: In my view there are a few simple steps. The first is that they need to lodge a fresh planning application showing both what they have built on site currently—because the city can give retrospective planning approval—and what they are proposing to do in the future. The city will then assess that and most likely grant an approval with conditions, and they need to get on and build in accordance with those conditions. They need to apply for building licences separately for those things. That is what they should do. They need to comply with the requirements of the approvals and get on with it. Most other developers do not have a problem dealing with these sorts of things; it is a routine process.

The CHAIRMAN: Is the city able to set time lines? If that is the case, are you able to say to the city, "Get on with the job and do it by such and such a time"?

Mr Povey: Not really, no. We have opportunities to take legal enforcement action on works that have already commenced or been completed without approval, so we can do that. We cannot necessarily demand—unless it is through negotiation processes, through our mediation currently in SAT—for things to be provided by a certain date. We are able to do that, if it is in that forum; but outside of that, no, not really.

The CHAIRMAN: Given everything that has gone on in this particular development, and given that a review is going on in addition to this particular inquiry, what changes would you like to see? You do not need to answer this today, but I would really appreciate any suggestions that council,

the city or individual officers would have. What changes around approvals would you like to see, individually and collectively, for the development of these kinds of retirement villages? If it was day one and we were starting again with KLLV, what would you like to see in place that would perhaps stop this kind of thing occurring?

Mr Povey: I think I touched on a couple in my opening address, and we may be able to add to them further. Obviously the ministerial appeal process has not helped. The original approval is very scant in its detail. The opportunity to then go back to the minister and have conditions either modified or clarified in certain ways has not helped also.

The CHAIRMAN: I think that was well canvassed too in the ACC inquiry, I think, into what occurred at the time.

Dr J.M. EDWARDS: Would that be addressed these days by the fact we have SAT?

Mr Povey: That is right. The government has put the tribunal in place, and that has largely addressed that issue. This particular type of development would not be subject to any call-in power by the minister. That essentially has been addressed. The other one is the one we touched on in relation to the building legislation and having some form of certification during the course of construction. Again, that would be particularly useful.

Dr J.M. EDWARDS: What about the management issues? Do you have any observations as professionals in the area about the situation of lifestyle villages? I guess the legally binding agreement tried to address this. However, can you give the committee any suggestions about recommendations we could make that will improve this matter for other people into the future?

Mr Povey: I guess it essentially boils down to the suitability of the organisation or the directors of the organisation to operate a village of this nature, and that is not something that the city has a direct role in.

The CHAIRMAN: Do you think that that has been part of the problem? It seems to me that it has been difficult for you to negotiate from a professional perspective. Is there any mechanism or something that you think could be put in place either by government or perhaps as part of the retirement villages code? How do you deal with it when you have an irreconcilable difference between a management group and a residents group, neither of which is going to go away?

Mr Povey: The only parallel that exists, as I understand it, is under the federal legislation, where if a nursing home does not meet certain standards, the government can step in and essentially take over the operation of that particular village, or require compliance on certain standards, and send in inspectors and those sorts of things. If there was a similar mechanism here, where a third party could step in where there were very large and destructive differences between a residents group and a management body in a retirement village, that potentially could be quite useful. You may have that in some form already with DOCEP and other organisations

The CHAIRMAN: SAT possibly has a role in that too.

Mr Povey: SAT possibly, yes.

Dr J.M. EDWARDS: I have not had a lot of experience with nursing home issues, but, from memory, there is a more formalised complaints mechanism in nursing homes, is there not, that leads up to that final decision by government to come in?

Mr Povey: There is a very structured inspection regime as well, because they are inspecting against certain standards that are set, so yes, if there is a breach of those standards, it can lead to a very quick intervention.

The CHAIRMAN: I want to ask you a question now about the relationship between your various internal departments. Is there an issue in terms of approvals versus building licences and the crossover that seems to happen between those two areas and other sections of council?

[12.10 pm]

It seems to me that your approvals people are having some difficulty. They are saying that there is a problem, yet there is still a requirement to issue a building licence. I am not being critical of council; I am just asking a straight question. Is there any way we can assist by making legislative changes or doing anything that the council thinks it can do to ensure that, wherever possible, those things are synchronised? In other words, if a developer has not been given an approval, he will not get a building licence. You have said that some of those issues have been fixed because of some of the changes made to the legislation, but can we do more?

Mr Povey: I understand that the legislation will continue to operate independently and separately; that is, the planning legislation on the one hand and the building legislation on the other. Essentially, local government will have to issue a building licence. So long as a licence complies with the Building Code of Australia, the city must issue the licence. If the development does not comply with the planning conditions, it is up to the city to initiate enforcement action under the Planning and Development Act. Unless one integrated development act covers planning and building, there always will be those two streams.

The CHAIRMAN: In fairness to councils, I suppose that there is no problem if people comply with the licence.

Mr Povey: That is true.

The CHAIRMAN: I have had the same problem with a neighbour. One of the difficulties appears to be the stage at which it is recognised that a development does not comply with a licence. What capacity does the council have to do something about that? Does the council bang its hand on the table and say, "You are doing it wrong; stop that and fix it"? I have looked into this matter for nine years. Is it because of the legislation that the council has its hands tied or it must wait until someone does something wrong before it can act?

Mr Povey: It is true that councils have to wait until someone has breached the conditions of an approval before the council can intervene. We have to witness the breach before we can take action.

The CHAIRMAN: It is different when building a retirement village because people only buy the right to live in it. The residents do not buy the property; they get the right to occupy the premises. These are special arrangements and it seems to me that before the approval to do anything was granted, very specific set plans should have been agreed to and very specific codes of conduct should have been in place for this type of premises. The Church of Christ and RSL do that as a matter of course before they undertake a housing development. Should we legislate to do those things before people can go even get an approval?

Mr Povey: Certainly, it would be very useful to have something in the legislation that would require the developers or operators of retirement villages to make sure they meet their statutory planning and building requirements before anyone is allowed to occupy the premises.

The CHAIRMAN: I suspect that it would be useful also if the policy that local governments adopted required developers to cite the types of code requirements that the retirement villages code of practice is requesting of these developers. It is one thing to have a formal building process; that is, a developer comes along and builds a building on a block of land and the council is happy because all that has been done. When there is an overlap, does it help the people who will live there comply with the code and the management? Is there a way of getting an overlap?

Mr Povey: That is not something that local government is involved in.

The CHAIRMAN: I am not suggesting that we put that responsibility on to local government. Because lifestyle villages are very specific developments that will have longstanding implications for the residents, management and council, would it help if developers had to tick a box to show that the developer would comply with a range of things in the planning or approval process? That

would then naturally become part of the lease arrangements down the track when people moved into X, Y or Z village and the council approved of the development. I do not know how to legislate for that; it is just a question that I put to councillors. I am not expecting councillors to race off and develop a new section of council.

Mr Povey: It would be useful. It might need to be introduced into the Retirement Villages Act so that if the planning approval is granted for that type of use, the developer or the operator would put in place those sorts of things.

The CHAIRMAN: I might be speaking from the basis of ignorance; it may already be there but perhaps in this case it has not been complied with.

Mr Barron: Can I just make a suggestion? One of the particular difficulties in the approval process for this development is the number of licences that were issued and the ad hoc way the approvals were given, which is the way they were submitted. From a legislative point of view, if a developer wants to do these types of developments, he could either do it in one stage or by staged plans to the satisfaction of the local authority. Legislative changes could give the appropriate authority the power to allow that. For example, if a developer wanted to build the first 10 of 52 units in one stage, the first stage would have to include the amenities in the complex. Mechanisms could be put in place so that if that were not done, permission would not be given to further extend the development. That was one of the shortfalls in the system in this instance.

The CHAIRMAN: Is the elephant in the room the fact that the developers use the incoming money to build the next stage of the development? That is understandable because it is a commercial arrangement. However, there should be an indication that the non-profitable areas would be completed before moving on to the other stages. That is essentially what you are saying. There is no profit from building a clubhouse.

Mr Barron: No. They leave that until last. That is not part of the retirement village legislation, which is where the shortfall was for this particular development. Another issue is the internal processes of a local government allowing staged licences. Maybe that should not be allowed when building a retirement village, or an agreement could be reached on what stage the development was at. It seems to be a rather strange process to submit 25 or 30 building applications for a set of 52 units. As you said, Mr Chairman, the developer wants to create a cash flow by building the first stage and then getting the cash to build the second stage, which is fine. That is where I believe the shortfall has occurred for this development.

The CHAIRMAN: The council could apply that as a general policy, but that would not necessarily —

Mr Povey: We cannot do that now. Under the current legislation, if the directors of Moss Glades want to build two units, they can apply for one building licence next week and another the week after. We cannot prevent them from doing that because it complies with the building code, and so we issue the licence.

The CHAIRMAN: When people receive literature from a developer that shows there will be a staged development, even though it does not provide any timelines or milestones, one would expect, from a resident's perspective that that would occur. In most instances, that is exactly what the big businesses do. That is a very good suggestion. Thank you.

Dr J.M. EDWARDS: It was said at the beginning of this hearing that this is a unique set of circumstances. Is there a danger that we might throw out the baby with the bathwater by believing that this is a standard set of circumstances and recommending too many legal restrictions? Should the committee bear that in mind?

Mr Povey: Probably. Other people have had more experience in this area than me, but I have had 15 years' experience in planning and development matters and I have never seen a development of

this nature when people have not wanted to comply with the approvals that they had been granted and have done everything to not comply with them.

[12.20 pm]

Dr J.M. EDWARDS: With the wisdom of hindsight—recognising that we are all very wise with hindsight—could the city have acted a bit more harshly earlier?

Mr Povey: Probably.

Dr J.M. EDWARDS: Where commonsense dictates that local government can be helpful and work in the interests of the community, you would do that?

Mr Povey: Yes. Normally, a prosecution action is our last resort. In this case, we did prosecute them last year, and we will probably prosecute them again, but it is really the last resort.

The CHAIRMAN: There is also a role here, I think, for the Retirement Villages Association. Obviously it would be concerned if this was putting the industry in a bad light. I must say, having served on the boards of aged care homes and retirement villages before I came into Parliament, that this is very different from the experience I have had with pretty much all of both the commercial and not-for-profit sectors. This is certainly a unique and very different situation. I thank the city for what it has done. There is no criticism of the city in the questions we have put to you. We simply want to get a picture of what has gone on and see whether there is an opportunity for us to make it easier for you as council employees, and indeed, for the city itself, to ensure that this kind of thing does not happen again. I sense from you, though, that you will be very vigilant in future when these kinds of developments raise their heads.

Mr Povey: I think it would be rare for the same set of circumstances—where a planning approval is granted on basically an A4 sketch—to occur ever again. I think the initial problem would not arise again.

The CHAIRMAN: I must admit I was extremely surprised. It is a long time since we built our last house, but I know what I had to go through to get our house approved. For somebody to be given permission to build 52 units, plus amenities, on the basis of an A4 sheet of paper that looks as though a chook has crawled over it, is a bit unusual.

I want to thank you formally for your evidence to the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. If there is an issue in terms of changing the context, obviously you would need to talk to us about that. Please make those corrections, and if you could return the transcript within 10 days of receipt we would appreciate it, because we are on a very tight time frame. If the transcript is not returned within that period, it will be deemed to be correct. For the sake of Hansard, please return only those pages of the transcript that need to be corrected. Thank you very much for your evidence this morning. You have all been very forthright. I also want to thank the council and the city for allowing us to obtain some briefings prior to the meeting. That was most helpful. We apologise for the additional work we have given you as officers. That is unavoidable. If any additional issues or any extra information comes up, by all means relate that back to us, perhaps through you, Ross, as the conduit. I also want to personally thank you, Bruce, for the effort you have gone to in the information you have given us. I do not know how you managed to sort all that out. Well done. If the CCC ever wants a new boss, I will recommend you! Thank you much.

Hearing concluded at 12.23 pm