

TRANSCRIPT



Online forum: Missing Middle Housing – the equity and affordability implications of reforms

1:30-3:30pm, Friday 13 February

Welcome and introduction

Chair (Corinne Dobson):

Welcome, good afternoon everyone, and welcome to ACT Shelter's online forum on *Missing Middle Housing – the Equity and Affordability Implications of Reforms*.

It's great to see such strong interest in today's discussion. We've had well over 100 registrations, and no doubt people will continue to join us, but we'll make a start now knowing that we have got a full discussion ahead of us and a lot of different areas relating to missing middle housing to traverse.

I'd like to begin today's session by acknowledging the Ngunnawal, Ngambri and Ngarigo peoples as the Traditional Custodians of the Canberra region from which I'm joining you from today. I pay my respects to their Elders past and present, acknowledge their continuing custodianship of this land, and recognise that sovereignty was never ceded. I also warmly welcome any Aboriginal and Torres Strait Islander peoples who may be joining us today.

And to colleagues joining from other states and territories, I acknowledge the Traditional Custodians of the lands on which you are joining us from.

So, today's topic is certainly very timely, and it's one that has been a focus of debate and discussion here in the ACT and also in other jurisdictions. We are facing, as is often noted, a housing affordability crisis, and across Australia governments are wrestling with how to increase housing supply and ensure more people can access secure, affordable housing.

One policy response that has gained significant momentum here in the ACT, and in other jurisdictions, is reforming planning systems to enable more so-called missing middle housing – more medium density housing, particularly in established suburbs, and the type of housing that sits between low density detached homes and high-rise apartments. Reforms aimed at facilitating missing middle housing often involve upzoning – increasing allowable density in established areas – alongside changes to approval pathways and development controls.

As the peak body for housing justice in the ACT, ACT Shelter is particularly concerned about the equity and affordability implications of these reforms. We're interested in interrogating some of the assumptions that are often brought into this policy debate, as well as thinking constructively about what measures and mechanisms should be implemented to ensure more equitable housing outcomes.

So, some of the key questions that we might consider today are:

- Will upzoning translate into genuinely more affordable homes?
- What are the distributional impacts of zoning and value uplift?
- How do tax settings interact with supply?

- And critically, how can reform support the delivery of more social and affordable housing, and not just additional dwellings?

These are complex questions, and they deserve careful evidence-based discussion. We have assembled an exceptional panel today to help us delve into some of these issues and explore the implications of proposed reforms.

For the first part of today's session, each of our presenters will provide a presentation or some opening remarks and – just so that we can get through all the speakers and make sure we have some time at the end for the panel discussion, we'll allow up to 5 minutes of audience questions after each presentation. Questions that we don't reach after each speaker will carry over into the moderated panel discussion in the second half of the session.

I think we'll go straight to our first speaker, who is James Bennett, Executive Branch Manager of the Building, Design and Development Branch within the ACT Government's City and Environment Directorate. James leads policy development relating to urban design, the Territory Plan and building performance, and is overseeing major reform projects including the Missing Middle Housing Reforms and the Sustainable Buildings Pathway. He is also the ACT's representative on the Australian Building Codes Board and has a background in environmental and property law.

James, thank you for joining us and over to you.

Speaker presentations

James Bennett, ACT Government

Thanks, Corinne, and thank you for having me along today to talk to you about the reforms.

I'm just going to bring up some slides, and we'll just talk to them generally, noting that we've got a lot of things to get through today. I'll give a brief overview of the reforms and happy to take any more detailed questions.

As Corinne mentioned, we've been progressing the missing middle housing reforms as one of the government's responses to providing more housing supply across the ACT and addressing future demand that we have for housing, as we expect the population to grow throughout the city.

The context for our reforms is looking at not only housing supply challenges now, but also the expected population growth in the future. On our population estimates, by 2050 we expect nearly 700,000 people to call our city home, and the ACT government has a commitment to enable 30,000 new homes across Canberra in the next five years.

The missing middle housing reforms as part of that program are really about supporting more housing choice, and having that housing choice available in new and existing suburbs across the ACT, recognising that we have a limited amount of available land left for new greenfield development. The reforms are looking to make better use of our existing suburbs and to limit urban sprawl. They are about planning for a more compact, efficient and sustainable Canberra by looking at opportunities for sensitive infill development to occur across the city. And so, a big point here is that the missing middle housing reforms open

capacity and flexibility within our planning system as it applies to our residential areas to meet that current and future demand for new housing.

For the missing middle housing reforms, we're talking about that lower end of the sort of medium density scale. We're talking dual and tri occupancies, terraces and townhouses and low-rise apartments up to three stories – that's been the focus of the current reform program that we're talking about.

The major reform elements that we have put forward here are a missing middle housing design guide, and also complementary changes to the Territory Plan which are seeking to remove barriers in the planning system that stop this type of housing being able to be built within our existing residential areas. And these are really about supporting well-designed, sustainable homes that are built well, are designed well, and in accordance with the best practice design guide to really strengthen the design outcomes that we're getting and so that we have functional, well designed and very liveable homes.

I will just touch on a couple of the key elements of the reform proposal, but I don't want to go into too much detail here, noting the time.

One of the big changes here is tweaks that we've made to the policy outcomes for the RZ1 (our low-density suburban zone) and our RZ2 zones (which have that slightly higher density aspect to it). We have tweaked them to talk about enabling change to occur within our suburbs, whilst respecting neighbourhood and landscape character.

It's been a really important part of this reform: we know that the Canberra that we know and love is important to so many people who live in this city, but also we need to cater for future housing demand and we need to cater for those people who currently don't have a home to live in, and try and find that balance to enable change to occur within our existing suburbs.

We have a range of policy tweaks that are aimed at increasing density through allowing more dwellings to be built on existing residential blocks, but also limiting the overall site coverage that can be built on. There is some key restrictions on how much of the block can be built on – so that we're finding that balance between more dwellings, but also protecting our planting areas, our open space on site, so people have a really nice, liveable dwelling including the environmental aspects.

Another element of this is to open up opportunities for different housing models and different housing styles. One of the things that we've done is remove a restriction on co-housing. What we've sought here is to allow people to build different forms of new housing and be really open and flexible to different models that people may choose to live in to suit their different needs, and offering a more affordable entry point for different housing models.

The other thing I want to mention here is that we have opened up opportunities for block subdivision and consolidation to allow greater flexibility. This allows large residential blocks to be subdivided into smaller parcels to create opportunity for more houses, and also to permit consolidation where there's an opportunity to bring multiple blocks together to form a more integrated and consolidated development.

I just want to touch on how policy design and implementation can deliver equitable housing and some of the key principles that we've been working through here.

As I mentioned earlier, a big part of this reform is about housing choice and allowing greater housing diversity across the residential areas in the ACT. At the moment people are restricted from having that housing choice based on the planning rules. These reforms will really open up that opportunity within the system for the market to provide housing that meets the different needs of the Canberra community responding to demands in different parts of the market.

We've also looked at changes to density to allow smaller, more efficient land use, potentially lowering some of the price points of new housing. We've looked at the location, aspect and access elements as well. Encouraging new housing in well located areas close to where people live and work, close to services and facilities, to improve the livability and make sure that people have that opportunity to live close to where they need to.

Access has been a really important part of the design-led process – about how our new development and land within established suburbs integrates within it. How a new development will interact with the surrounding public spaces – with the pedestrian network, the open space network, and the public transport network – to make sure that we have good design principles that are supporting these new developments. Also, elements around amenity, living infrastructure and sustainability have been really important principles that we've sought to deliver through the reform program.

As we move forward and the reforms are considered by the Legislative Assembly, and hopefully approved in the coming months, we'll move into the implementation phase where we're also looking at developing a Canberra House Pattern Book.

We're planning to run a design competition to develop a pattern book of missing middle housing designs that will offer a streamlined approval pathway and this will provide the community with cost-effective access to high quality designs that meet the planning rules that we are putting forward. The designs will have options for different types of housing outcomes, including price range, sizes, and accessibility and adaptability will be fundamental elements. We'll be looking at opportunities to demonstrate the pattern book dwellings through construction and also undertake evaluation of this process to make sure that we've achieved the outcomes that we've set out to do.

I want to touch on the next steps of the work. As Corinne mentioned, we've had the Assembly Inquiry this week. The government appeared with the Minister yesterday, and now the Committee will go away and finish their report. We're expecting that report by April. Following that, the government will consider any recommendations, and finalise the planning changes and bring them back to the Assembly for approval. And there's a period of time where the Assembly can consider those final reforms before they can commence.

At the same time, as those reforms are being finalised and approved, we will be finalising the missing middle housing design guide and then looking at those future work programmes around the pattern book and how we can have streamlined approval pathways that bring new housing on quicker and allow people the opportunity to move into these new dwellings.

Chair (Corinne Dobson)

Thanks very much, James. So, now, does anyone have any questions that they wanted to ask James about his presentation, and what's being proposed here in the ACT?

Dr Ed Wensing

Hi, Corinne. Just a quick question for James. What are the possibilities for land assembly at the small scale or adjoining owners? And, the other question is around the standards for minimum open space?

James Bennett

Thank you. So, on the land assembly: that is absolutely something that we have opened up some flexibility on in the RZ1 zone. That's currently prohibited in the RZ one zone. And we have opened up the opportunity for what we're calling block consolidation where we have blocks that are adjacent to each other that could be brought forward together. We do know that increasing the parcel of land allows greater opportunities for design and resolving some of the constraints on the land and also sort of integrating into the broader streetscape and the path and access network. So we have opened up those opportunities here, and that is something that we'll be leaving to the private market: to identify those opportunities, partner with builders and developers to seek to find those opportunities where they are available and are viable and make sense.

On the open space requirements: we have made some tweaks to the open space requirements and what we are working through our design process. We've got a range of urban design architecture expertise within our team, and we've engaged some consultants to support that work. We've also worked with the local design and architecture profession to find the right balance between denser housing, but also making sure that we have good amenity and livability on the block. So, by having some more housing on there, there's a need to have increased driveway space and services. But, also, we've been really careful to retain good meaningful open space on the block for planting areas, but also for that private open space for residents to live in as well.

Chair (Corinne Dobson)

Thank you, James. You mentioned block consolidation and some other things there. How much might some of these options that you're looking at facilitate potentially more social and affordable housing? Or what mechanisms in these reforms are the government thinking about to help reverse that decline overall in the proportion of social housing, particularly in the ACT? One of the things that we're looking at with the missing middle is not only how reforms are going to help with overall affordability, but also thinking about how we can get more of those particular housing types for those who are locked out of the private market.

James Bennett

Thank you. So, I guess the first thing which I won't talk about in too much detail because it's not in my policy area, but the Minister for Housing, Minister Berry, talked about it yesterday. The government has a particular set of housing targets around public housing and growing the public housing portfolio complementary to that. These opportunities for denser housing will be available to all lessees including the ACT Government's public housing program. So, there's some good opportunities, that not just private lessees will be able to benefit from, but also opportunities for the public housing program to explore for infill developments.

I'd also make the point that this reform is complemented by a range of other supports and interventions. Just last week, the government made a significant announcement about

reducing Lease Variation Charges for community housing providers to help deliver social and affordable rentals. This a significant investment by the government to reduce the Lease Variation Charge cost to open up opportunities for CHPs to make viability work and then really broaden that social and affordable rental off.

Chair (Corinne Dobson)

Thank you. I will just go to two more questions. I just noticed Libby asked the question: when will the competition for the Canberra house pattern book commence?

James Bennett

We are looking to commence the pattern book competition after the reforms pass the Assembly, as we want to run the pattern book competition based on whatever the final form of the reforms are that pass the Assembly. We're hoping that the reforms will go to the Assembly in around the mid-year, and then there'll be some period of time for the Assembly to consider them. So, second half of this year, potentially early next year when that design competition is happening.

Chair (Corinne Dobson)

And there's a question I noticed in the chat about the Lease Variation Charge, which we certainly will get to talk about a bit more. Later in this session there might be an opportunity to delve into that further. So I'll just go to Lynette and then we'll move on to the next speaker.

Lynette Loffel

I'm from a group in the Queensland Housing Older Women Movement, but we're not only about housing older women. We have the Minister for Housing interested in having a demonstration project using community land trust for more affordable housing dwellings in a co-housing type of middle density, middle missing type of infill. We are hoping to do something with a community housing provider as a partner, so that there are rentals and home buyers who would otherwise be in that great band of people who can't afford to buy a house nowadays. And that's why I'm asking if it's likely that James or others will be able to liaise with us. Help us as we begin to persuade the planning authorities etcetera here in Queensland, because it seems as if co-housing and community land trust and cooperative housing has never been... It has existed in Queensland, but it's sort of not spoken of. It doesn't exist now, so I'm hoping that the sharing of your slides and things will also lead to perhaps some of kind of report.

James Bennett

Thanks, Linda. Just to quickly respond to that... That's the sort of development that was previously prohibited on the RZ1 land here in the ACT, and through the reforms we are opening up that as a different type of housing model that is available to people. So we have been very keen to look at the built form and make sure that it isn't "over densifying" as an overdevelopment of the residential area, but then also introducing flexibility for the different ways and different housing models that that people want to pursue and having that flexibility to consider those sorts of proposals in the future.

Chair (Corinne Dobson)

Thank you very much James. We'll get to the next speaker now. I'd like to introduce the next speaker, Dr Tim Helm, who is Director of Research and Policy at thinktank, Prosper Australia.

Tim is an economist specialising in taxation, housing and infrastructure. He has worked as a freelance consultant and at Ernst and Young and the Victorian and New Zealand treasuries. Tim has worked for local, state and federal governments on transport, housing and taxation and regularly provides advice to inquiries, policymakers and media. His PhD is from the University of Melbourne and examined the economics of land tax in particular. Today, Tim will be focusing, I think, on the interaction between tax settings, including the Lease Variation Charge and upzoning. So, welcome Tim and over to you.

Dr Tim Helm

Thank you very much for inviting me here and pulling this together at such short notice. It's a pleasure to speak to you all. The caveat here will be that I'm not a Canberra local. I won't know the ins and outs of your planning system, and I'm going to really change tack a little bit from James's talk to take us over to property tax, which is broadly, where my think tank is working.

Prosper Australia is who I work for. We have quite a long history focused on the intersection of land policy, housing policy and tax policy. And we come from the perspective of a tax system reform that reduces taxes on productive activity and raises more revenue by capturing windfall gains from land and resource rents. A system based on capturing unearned income for public revenue is going to be better for the economy and a more just way of raising revenue.

Because of this history and this mission, we've actually had quite a lot of interest in Canberra over the years, and the ACT government has also been a leader in some policy reforms such as stamp duty to land tax. We've also paid quite a lot of attention to the Lease Variation Charge (LVC). We see it as quite an unusual and really principled and efficient instrument for pricing development rights, for pricing property that's being transferred in essence from the Territory to private landowners, and which would otherwise crystallise in land value gains, in unearned windfall gains.

And, as the Territory is now considering changes to the LVC in the context of your missing middle upzoning, we happen to have been examining it quite closely over the last year, as part of a research project, as one amongst a number of options for enacting what we can call 'value capture'. This means the principle of capturing for public revenue the private land value windfalls that come from public decisions, and most notably, windfalls created through the planning system. But we can also think about value capture for infrastructure.

As we've gone to look at the different ways different states are going about capturing value, including the rezoning windfall gains tax in Victoria, we've actually settled upon the LVC, this quiet little instrument that sits on your budget books, as really a best-in-class model for doing what it does: for capturing this value. It is a best-in-class model that we think other states should adopt as a means of no longer handing over these property rights for free to private landowners and allowing the financial benefit of that to crystallise on private balance sheets.

So, at the same time there are concessions being considered, I think there's probably not necessarily a wide appreciation of the purpose and the operation and the efficiency of the LVC. At the same time as this is going on in Canberra, we are, if you like, holding up your model as best-in-class for Australia.

I've worked in other areas too – I'm an economist – for example the economics of the way land-use regulation and zoning reforms relates to housing supply and affordability. But I'll park that aside for today – happy to take questions – and I want to focus on what I think many of you would be interested in, and ACT Government policy makers will be interested in, which is this question of whether the LVC, as it's currently constituted and administered, might be a barrier to housing supply, might be discouraging housing development, or slowing down conversion of land to medium density uses, and particularly in these older suburbs. And whether the LVC might be working at odds to the policy goals that you've got with this reform. And I suppose then, the follow-on question is what can the Territory expect if it proceeds with what the Government has flagged in terms of concessions on missing middle housing types for the LVC.

I'll just briefly sketch the type of arguments we're running in other states to hold up your model as a wonderful form of value capture, so that you can understand the real purpose and operation of the charge if you're not familiar with it. So, you can think about LVC, despite it being really a tax in the government budget papers, it's actually better conceived as a price for some property. It's a price that developers pay to vary the purpose on the lease in order to acquire those additional use rights for their land.

Your property title is nothing more really than a bundle of rights guaranteed under law, circumscribed by the planning system, provided for in particular Acts, and enforced by courts and police. So, property is a bundle of rights. When you add to the bundle, the bundle's value grows. Now the planning system gives you permission for something you couldn't previously do – that's adding to the bundle – and it's fair and principled that the public handing over those rights should be compensated by receiving full value for those rights, instead of giving away rights that have market value for free. So that's the purpose of the LVC: to price a right to some property, some publicly owned property that would otherwise be given away. And the really interesting feature is the charge is calibrated to the value that buyer will receive, and they would otherwise receive this in the form of a land value windfall. So, using real estate records, land valuations, the Territory is setting up really a menu of prices by suburb. If you want to buy an additional 1 dwelling you pay a certain amount, if you want to buy an additional 10, you pay a certain amount, and it varies of course by suburb according to demand, different locations, and the idea is that menu is quite well calibrated to the land value uplift that would otherwise be received – the target being 75% of the value of those rights being captured through this price. It's mostly done through the schedule of codified charges, but for larger developments there's a formula-based process looking at development residual profits, but also attempting to get the same 75% goal.

Now, to look at what you're doing here. If I am a private landowner with land where it has certain use rights attached, and I sell those rights, I sell that title to somebody else, I expect and hope to receive 100% of the value of the rights, and the sale price and market competition usually does that. We're simply asking the Territory or state governments generally to use the same principle when they transfer rights into private hands – to try and

get as close to the market value of rights as they possibly can. So, the LVC is the ACT's way of trying to be as commercially savvy as private sector land sellers would be.

As you will all well know if you read news from other states, in the vast majority of Australia, corruption in the planning system is a huge problem. And that's driven in large part by these capital gains, by these land value windfalls that are received through rezoning and generous planning permissions. And that's a huge honeypot – these economic rents are a honeypot for corruption and rent seeking. And they're also a reason to speculate by holding land out of use, rather than developing it. The ACT has a good policy instrument in place to prevent this.

As part of our report, we've been estimating the quantum of this – what's the value in other states of the handover or the giveaway of value. And we reckon more than \$10 billion a year in other states has effectively been given in free wealth to existing property owners, such that if they were capturing 75% of this, as the Lease Variation Charge does, they could pay for significant housing help for people that are currently locked out of housing markets. We think the amount that could be raised in this way could pay for abolition of stamp duty for all first-time home buyers, which would be a huge leg up for non-homeowners, and secondly a 50% increase in social housing stock in every state. So, something like 200,000 additional social houses that could be paid for simply by pricing instead of giving away development rights. So that's the purpose of the LVC.

The question being then: whether this charge is also deterring development. And if you look at the ACT's track record in building new housing at a rapid nation-leading rate of population growth, the answer should be obviously no. But we hear from the property industry certain claims in this respect, some of which have some forms of logic to them, so I'll briefly cover those.

The property industry, in the context of missing middle housing, have made some claims that LVC will be added as a cost and passed on to the end user in terms of a higher house price. This 'pass through' idea – this one's a real furphy. Developers are price takers. When these charges are well signalled – as anyone that's done a bit of feasibility analysis knows, or any planner knows – the development market will price it into what they pay for land. So, the effect of these taxes or prices is to reduce the land price. The land price is flexible and it will absorb these taxes, so this is a bit of a furphy.

There's an interesting idea that LVC might be skewing development types away from more and smaller units towards fewer and larger units. And I think this is probably not so material. This is claimed on the basis that it's a per dwelling charge, but embedded in the design of the charge is a diminishing price the more dwellings you put on your site. And that comes from real estate sales records, which in essence reflect the market's valuation of land with different lease purposes attached to it – land with different types of rights attached to it. So compared to some of these development charges in other states, which are a fixed per dwelling charge irrespective of how many dwellings are built, the LVC has a good bit of flexibility built into it. So I don't think it's probably skewing the market in the way that is sometimes claimed. But, nationwide, we are seeing a lot of the apartment market shift towards larger higher-value dwellings. That is a national trend – and I don't think it's any kind of local policy effect.

The most interesting claim or concern is that LVC will make some developments infeasible – so some changes of use that would otherwise have occurred will no longer be worth

pursuing, and that that may reduce housing supply. That's one of the claims that is worth interrogating a little. And the kernel of truth here is that where there's a property that has high value structures on it, such that a change of use – replacing the existing structures and putting up new ones such that that change of use is pretty marginal – then the LVC may tip that development into infeasibility.

So if you have a high-quality structure built 10 years ago, it's adding half a million dollars value to the land, and the best development project if you demolished it would add value net of costs of say \$600,000 – then any price greater than \$100,000 for those incremental use rights is going to discourage that from happening. But there's a really critical point in this argument, which is that feasibility of development is a necessary condition for that development to go ahead, but it's not sufficient. In fact, there are many sites that can have a feasible change of use, and they proceed through to development depending on how feasible they are. A site that has high-value structures is always going to be held for a long time until those structures depreciate and until that site is development ready, until it's the right time to develop the site. For sites where the structures are depreciated and are adding no more value to the land, the LVC as it's currently being calculated is a price that's just right for the value that the developers get in exchange for what they're paying. Setting aside whether the tax or the price is appropriately calculated, in principle the design of the thing, aiming for 75% of the land value uplift, is suitable for land that is about to be developed.

So, for all the buyers of these property rights that we want to buy the rights, those buyers are certainly going to be willing to pay this price. And its only land that is barely feasible to develop that may be tipped into infeasibility by the LVC. And that's land that wouldn't proceed through to development anyway, because it's far from the optimal time to bowl those structures and replace them with new ones. This land ripens towards development readiness as structures depreciate, and it doesn't matter if we're reducing the feasible pool very slightly – the pool of feasible capacity – because only a tiny fraction of that feasible pool actually proceeds to development, and it happens in a sequence starting with the sites that are most feasible.

I think it's a subtle point that I've raised, but it's important, I think, as a headline conclusion for anyone involved in this area to recognise that there isn't a strong argument that LVC is standing in the way of any types of redevelopment, missing middle included. Development is always going to happen on certain sites above others first.

So, what then would be the effects of issuing these concessions? I think what the ACT can expect is not necessarily any kind of increase in housing supply from issuing concessions to missing middle housing. There's a limited buyer market for each type of development, including townhouses, including low-density apartments, and so developers aren't going to rush to overbuild if it means sacrificing sites that could be held in their current use, if there's a good structure on it, or developed at a later time when the market is ready for absorbing more units of that type.

So, I think the principle of skewing ownership towards certain housing types such as social and community housing providers above commercial providers – that's a legitimate objective that you can try and achieve with the LVC. But the idea that you can use the LVC to boost housing supply per se – to lift the overall rate of production of new housing – that's a bit of a furphy, and I don't think that's well justified in economic terms. Possibly LVC concessions might skew activity away from greenfields towards missing middle. But again, I don't think

that's likely to be material since there's limited and differential markets for all these different types of housing.

So, I'll close here... the key point is that if you take your tax off land by cutting LVC for medium density development in a whole swathe of existing suburbs, then the primary effect of that is just to lead to that land value rising. It's not going to make it any easier for a future developer to acquire that site and develop it. It's still going to be on razor thin margins. What's happening here is that the existing owners of that land – especially if that land doesn't have much in the way of structure value on it – get a windfall. They've already received a little windfall thanks to the rezoning, and if the tax that was expected when they bought the site is actually removed or reduced, their windfall will only grow. So, the budget cost of this is that you're losing revenue and you're potentially making it more attractive to sit on sites rather than developing them, and you're actually channelling value into the hands of private landowners in ways that the LVC was intended to prevent.

I'll close on that, and would be really happy to take questions.

Chair (Corinne Dobson)

Thanks very much, Tim. There's obviously a lot of interest in the research paper. Is that available to share or is that going to be available to share soon?

Dr Tim Helm

We're targeting probably early May for a release. It's been on the boil for a while. It's going to be a research paper broadly called pricing development rights. We'll make sure that we circulate it with the ACT Shelter and so on. So, it'd be Prosper Australia releasing it, and we're looking at around May for that research paper.

Chair (Corinne Dobson)

That'll be great. I mean, obviously the windfall gains taxes and other sorts of regimes is an issue in other jurisdictions, but I know in the ACT there's been a lot of focus on the Lease Variation Charge.

Anthony Gill, did you have a question that you wanted to ask Tim?

Anthony Gill

You've certainly got your head right down deep into the Lease Variation Charges, Tim – thanks for that. I'm trying to get my head around that mechanism where it's going to be held and it's either collected for the public good and tipped back into housing, or it's taken by the private developers in their profits. Can that be likened to the Victorian situation where you've got land tax, residential vacancies tax and we've heard where the investors have fled Victoria, so the Victorian property prices have been subdued, not rising quite so much as other states. Is that a similar sort of mechanism there that would help me understand?

Dr Tim Helm

Yes, look, the two ways that sort of explain the general point are: one, rights are property, there's nothing more to property than a bundle of rights. You add rights, the value goes up. So, you can take examples from Sydney – the news media loves these – where there's some upzoning around train stations, or whatever it is. Everybody gets a huge windfall –

people in Rose Bay, or wherever, their property price triples. This is the obvious windfall gain. It's also the obvious source of a great degree of corruption. It's just a handover of property – that's the best way of conceiving it, it is that state governments, by and large, are sort of dupes, handing over property for free instead of actually pricing it as any commercially savvy organisation would when they're selling off their assets. That's in essence what's going on with unpriced upzoning or unpriced planning permission. The planning permission is really where the transfer of rights happens, but because planning permission is typically received without due consideration, without payment at the point of upzoning, people anticipate that. And so you see these windfall gains at the point of upzoning.

And this is in fact is the strength of the LVC, because Victoria's tax only applies at the point of upzoning, so only a small portion of the value provided by the whole planning pipeline, or the planning system, actually crystallises at the point of upzoning. So it's a very narrow tax base compared to the LVC which taxes the full value of the change of use.

As for your point about other taxes, such as land tax, and vacant residential land tax. The key point to bear in mind here is land has no production cost. It's not like say tradies or other labour inputs to construction – they have some cost to provide. Yes, developers pay a price for land, but that price can be anywhere between zero and anything, and that price flexes depending on the residual value from developing it. And any tax, whatever it is – an expected land tax for the new occupant, an expected vacant residential land tax, a LVC, infrastructure contributions – all of that is factored into what developers pay for land. It all reduces land prices and it means there cannot be any impact on any of these taxes being passed through to home buyers unless the impact is to slow down development. And that's a case-by-case basis depending on property tax.

Chair (Corinne Dobson)

I think that's been incredibly useful, Tim. And I think we might come back to a few more questions about the Lease Variation Charge in the panel session, but I might move on now to our next speaker who is Dr Ed Wensing. Ed is an associate and special advisor at SGS Economics and Planning and a research fellow at the City's Futures Research Centre at the University of NSW. He's an experienced planner, researcher, policy analyst and academic with experience across government, the private sector, non-government organisations and professional associations as well as research and teaching roles at several Australian universities. He has published extensively and continues to contribute across a broad range of public policy fields. Thank you, Ed, over to you.

Dr Ed Wensing

Thanks Corinne. I'd like to begin by acknowledging that I'm on Ngambri, Ngarigo and Ngunnawal country, and I respect the connections of the traditional owners and thank them for their custodianship of the land we live on.

I've just got a few quick points to make. I have lived in Canberra all my life. I've worked across Australia in different contexts and have travelled extensively throughout Australia and occasionally overseas as well.

I want to make some very quick observations. The origin of the Canberra leasehold system goes back to the works of Henry George actually, because when you look at the

parliamentary debates in the early parts of the last century, which led to the formation of our leasehold legislation, two of our politicians at the time, Senator Rae in about 1912, and Senator John Grant in the 1920s, referred extensively to speeches that Henry George had given in the preceding century. So, the roots of our Lease Variation Charge are very deep and long in history. I spent 25 years of my life from the 1970s through to the early 2000s, basically defending our leasehold system and my personal papers of that period are now in the National Library of Australia. As a long-time observer and defender of our unique leasehold system, I'll make the comment that the Lease Variation Charge is actually an integral part of our unique leasehold system, and that great care needs to be exercised when making changes that may erode its effectiveness.

Any suggestions of scrapping it will have to be met with a replacement developer contribution charge because there's no such thing as a free lunch anymore. Every additional dwelling and every change in land use has externality costs that are an impost on the running of the city, and they need to be funded in some way. The foundation of my remarks is based on the fact that in every jurisdiction in Australia, the Crown retains the rights to land even when supposedly absolute ownership is granted through freehold and even in the nature of leasehold in the ACT [except native title rights, as they pre-date settlement by the British from 1788 onwards]. The Crown always retains the ownership of the development rights in land, which is something that Tim alluded to. These rights do not automatically attach to freehold or leasehold. Any change in development rights have to be secured through the planning system, and the Crown may give or withhold development permission at its absolute discretion.

I have a bit of trouble with the wording when we say the 'approval system'. I don't see the system as an approval system – I call it an assessment system because the Minister always holds the discretion to refuse the application, or to vary it and or just simply approve it. Land may be zoned for certain purposes and development types that may be traded privately in anticipation of those development rights foreshadowed by the planning system. But until such time as a permit is issued, no compensable rights exist. Moreover, the Crown may change the planning rules at any time and again at its absolute discretion, which is what it is currently doing through the variations to the Territory Plan and the RZ1 and RZ2 categories. The point at which the Lease Variation Charge applies is when the additional development rights are actually granted.

The other comment I would make is that concessions that were discounts to the Lease Variation Charge need to be very carefully considered for their long-term impacts because they have the potential to undermine the system.

The other thing I want to do is to respond to one of the questions in the chat. Jules Bray says: *I'm aware of a large parcel of land in northern Canberra that would be ideal for affordable housing, but the religious body that owns it can't afford to develop it. And if selling part of it... to pay the developer, will it lose so much in Lease Variation Charges that it's not feasible for them to do so?*

Well, my answer to that is a bit different to James's answer. It would depend in part on when the original lease was granted and under which statute at the time, because in the early days of Canberra's development, the government gave away land so that sites would be developed for community purposes, like churches, for example. And if it was issued under the old Church Lands Leases Ordinance, it was probably issued for a penny or a pound and

at no other cost to the lessee. My position would be that if the lease is to be changed in its value for another purpose, the church has no right to the future development options under that lease arrangement – it should hand the lease back to the Crown. The Crown can then put the site on the market if it chooses to put it on the market as a way of disposing of it, or it could put it through a select tender process, or in fact hand it over to the public housing system to develop it for public or community housing. That way the government captures the full increase in value of the land. Of course, the lessee should be entitled to the compensation for the value of any improvements to the land, but not for the loss of the lease, particularly not if the lease was granted for a peppercorn sum in the first place.

There are very important principles in our leasehold system that come from its origins and its original legislation, which have partially been lost through the many changes that have been made over the years.

The other comment I would make is that I'm also aware of several blocks of land in inner Canberra – individual residential blocks that have been vacant for a long time – and I know for a fact that those sites would be in breach of their lease purpose clause, and that is that the land must be put to a use and kept in use. If it's out of use for more than 12 months, the Crown has a right to repossess the land. The failure in the ACT system is that we don't have a culture of enforcement in this space. Those parcels should be taken off those lessees because they're speculating in the system, and speculation's not good, not good for the system in any way, shape or form, and it should be stopped. Those sites need to be resumed.

I've also made some comments through the Canberra Times almost 12 months ago about the limits to Canberra's growth. And there are five particular limits that I see that I'm concerned are not being fully addressed in our long-term strategic planning. The city was planned for a population of 500,000. We're approaching that very quickly. James said that we're going to reach 750,000 probably within the next decade or more. There are physical limits to how far we can go and the physical limits are really crucial. The first one is the border. We might be negotiating a slight extension out at West Belconnen to cover Ginninderry. That's all well and good, but if you want to build another night another new town of 90,000 to 100,000 people. The only way you can do that – the only place that's really suitable for that, in topographical terms – is land to the north of Belconnen and Gungahlin, and that would have to be purchased by the Commonwealth. And I mean purchased – the Commonwealth can't acquire land without compensation on just terms under Section 51(xxxi) of our Constitution, and the High Court has set several precedents for that in other contexts.

The other four constraints... two of them are deeply intertwined, and that is the transport, the travel demand, and the topography.

We are limited with external growth because of the nature of our topography within the ACT. The city was designed on a linear scale to achieve economies in operation and economic efficiency by having reverse loading in our travel demand. We could achieve that when we had a linear arrangement between our principal centres of employment. And I've long expressed the view that I think the developments that have occurred out at the airport have distorted that and, similarly, the residential developments in the Molonglo have also distorted that linear arrangement.

And while we're now beginning to build a public transport system, the fixed rail system, I do think in some respects it's not capable of keeping up with the long-term demand when we get to one million people. And I think there are there are issues there that need to be looked at.

The other two constraints that are also deeply intertwined with each other are water and sewerage. We live in the driest continent on Earth. We're in one of the most stretched river systems in the country: the Murray Darling Basin. There is currently a review of the upper Murrumbidgee underway, because the Snowy Hydro Agreement pulls out more than 90% of the water from the upper Murrumbidgee for hydroelectricity purposes. And between Tantangara Dam and Burrinjuck Dam the River is dying. So we need to have a really serious look at how that's operating, which – thanks to David Pocock – that's now currently underway. But nevertheless, we're the country's largest inland city. We have to treat our sewerage to 100%: it has to be drinkable at the other end because downstream from us we provide potable water for a lot of communities, including Adelaide, at the end of the river system, and food production in the Murrumbidgee irrigation area. So, we have to produce high quality water out of our wastewater system, and at present, although the sewerage system's been extended to arguably to cope for 700,000, what are we going to do when we get to a million? Are we going to build another Lower Molonglo Water Quality Control Centre of the same standard and capacity to cope with that extra 500,000 people? And where do we put it when we don't quite know where some of that growth is going to be? And even increases in density in our existing urban fabric also place serious demands on our water supply and sewage, and even our storm water systems for that matter.

And so these things all need to be looked at as part of the overall scheme of developing this city for the next 500,000 people. Thanks.

Chair (Corinne Dobson)

Thanks, Ed. Does anyone have any questions for Ed?

Just while people are thinking about that, I have a question. Ed, I know you've pointed to some of the challenges of an expanding population, and the population is going to continue to grow in the ACT. And if we're thinking about what that means in terms of equity and affordability, then how can we best do that? There are implications if we continue to sprawl outwards with those lower density suburbs – there's equity and affordability, as well as environmental and ecological implications. So, perhaps if you just put on your urban planning hat, and just thinking about what that means socially and economically, if we're looking at, as the population increases, how can we actually accommodate people in a way that we're going to mitigate some of those potential problems? What should we be focusing on? Is missing middle a part of that – trying to increase the supply of more medium density housing, rather than just sprawling ever-outwards with more suburbs?

Dr Ed Wensing

Yes, clearly the missing middle has to be part of that. Our households are generally much smaller than they were four decades ago...

Chair (Corinne Dobson)

Although the house sizes are getting bigger, I noticed. In the ACT the detached houses – they're huge.

Dr Ed Wensing

Well, indeed they are. Look, Canberra enjoys a reasonable degree of amenity because of its low density, but when we compare the density figures for this city against even other Australian cities, we have a very high proportion of low-density housing.

So there's a bit of an assumption there that there's capacity within the system to increase the density. That's true, and that was the reason why I asked the question earlier about land assembly for small developments of no more than two or three existing residential blocks being amalgamated when the time is right.

And I think there are things we can do through the land assembly process using the leasehold system to enable that to occur in a more streamlined and economic fashion that's more affordable for those people that are happy to make that transition happen on their own land, including even dual occupancies and splitting the blocks. So they all have to be part of the equation.

And the other factor that I think needs to be taken into account is the impact on public open space. We know from research over many decades that the private residential quarter acre block provides three opportunities for use of open space. Part of it is amenity: that is, the set back from the front boundary, and that's often used for landscaping and whatever. And that is also subject to orientation. Secondly, there is the private open space that's used for personal recreation. And then the third component is the utility open space, where you park your garbage and your garden shed and your car or whatever, and your caravan and your boat.

When we reduce block sizes down to 400 square metres or less – and I see some of this in the new subdivisions, in parts of Gungahlin, for example, where I live – there's no space for landscaping to grow above the roof line, and therefore there's no release from the urban heat that's generated, and particularly not when the roofs are all black. Why we are still approving black roofed houses in this climate is beyond me – we shouldn't be. And so that's a consideration that has to be taken into account. I was pleased to hear James say, in response to my question about open space considerations, that at least that's a factor that's hopefully being considered in the amalgamation processes that are occurring, and that will be accommodated in the design guides or in the pattern books.

And there are always opportunities that the government should be looking for, and the planners should be looking for, for social and community housing. The reason why we have a housing crisis is basically because the economics of it is screwed. And the economics of it is screwed because the Commonwealth and the states have basically walked away from providing public housing. It's now less than 5% of the total stock across the nation. It's appalling. Why are the queues for public housing and community housing so long? Well, principally because governments have walked away from their obligations and created housing as only an investment vehicle. For goodness sakes: scrap the negative gearing and the capital gains tax exemptions for starters to try and balance the scales, and then direct more of that investment toward public housing. I think I saw figures the other day that said

that if you scrap those two components, you'd have money in the budget to do some more wonderful things in the public housing space. Well, let's see it happen.

Chair (Corinne Dobson)

Yes, I'd agree with you there Ed, and I'm sure I could have a discussion about the broader tax settings at the federal level as well – but that might be a conversation for another day.

Dr Ed Wensing

Someone [in the chat] has come in and said public housing now constitutes about 3% of housing stock. There you go.

Chair (Corinne Dobson)

Yes, thank you very much Ed, and we might pull out some of those things further in the panel discussion if we get time, we'll see how we go. But I might move now to our next speaker who is Professor Cathy Sherry. Cathy is a leading Australian expert on strata and community title. She's a professor in the Macquarie University Law School, an executive member of the Smart Green Cities Research Centre, and a member of Macquarie University Housing and Urban Research Centre. Her research focuses on the legal, social and economic complexities of strata and other forms of collectively owned property, particularly in higher density housing. She is the author of prominent and highly cited publications in the area of property law and regularly advises governments in Australia and overseas on laws governing multi-owned properties and higher density housing.

Thank you, Cathy, over to you.

Professor Cathy Sherry

Thank you very much, Corinne, and thank you very much for asking me. I'm going to start by saying that I, unlike Ed, don't live in Canberra. I do live in Sydney, though I do have an odd connection to Canberra, and that is that Strathnairn, the new suburb there, was my husband's grandparents' farm. I was there quite recently, and it was quite interesting to see how it's developed and to know the cafe there was my father-in-law's bedroom.

One of the caveats I want to say about Canberra is that I'm not going to be specifically talking about the leasehold system, though I do understand some of it, but I can certainly try and answer questions in relation to that.

So, what I'm going to be addressing today is strata title. Something that I think is incredibly concerning all across Australia – and it's wonderful to have James here from the Department of Planning – is the almost complete disconnect between planning law and private property law, and in particular strata title.

Governments all across Australia have become convinced that high density housing is the solution to the housing affordability crisis. I think there's all sorts of questions to unpack in that economically, but I'll put them to one side. But it is inevitable that all of that high density housing will be strata, and that much of the medium density housing will be strata. And this has incredibly important implications for the livability of that housing and for its affordability. But that is routinely, simply, never considered in the planning system.

I haven't got PowerPoints, but I want to start by talking about the absolute basics of strata title that I think are overlooked. So, the most common interest in land in Australia is freehold fee simple. Now, strata titles are freehold Torrens title fee simple. Again, not Canberra, of course – it is slightly different. But all strata titles are freehold fee simple Torrens titles – unless you're on a Queensland island or on the foreshore of Sydney Harbour, no matter what a real estate agent tells you. But they fundamentally differ from other forms of freehold titles in one key way.

Now the key attribute of a freehold title, as opposed to a leasehold title, is that you will never be made to pay money by virtue of buying your interest in land. This is not an accident – it's an incredibly important rule of orthodox property law that helped us dismantle the feudal pyramid and build liberal democratic capitalist land markets. I'm going to say this very quickly, I'm not going to talk about feudalism. But in a feudal society, ownership of land meant incredibly complex relationships with a whole lot of people up and above you and below you in the feudal pyramid. There also, of course, was obligations to pay feudal dues, which were originally things like agricultural services, admin services, providing knights, things like that. They were eventually turned into payments of money. One of the key ways we dismantled feudalism was getting rid of a whole lot of property rules that allowed people to create property titles that were coupled with obligations to do things for other people – the most important one being the obligation to pay money.

The result is that if you buy a house in the suburbs in Australia you're buying a freehold fee simple. You pay your vendor, you pay your local council rates, but you can never be made to make other ongoing monetary payments. You will never be compelled to employ your vendor's cleaner, and you will never be compelled to buy electricity or water from a particular supplier. That's not an accident – it is a very conscious choice by property law, and it's the result of the rule of property law that prohibits the imposition of positive obligations, for example, to pay money on freehold land titles. So, a developer cannot chop up a chicken farm on the outskirts of Sydney, create new land titles and impose on them obligations for all of the future owners to pay money. Because judges and legislatures know from hard, cold experience that if you let developers do that, they will load land up with obligations to pay money that benefits them and their mates. So, it's a very sensible rule of property law and it is benefiting every single person who owns a non-strata property in Australia today.

However, the rule creates a real problem for the maintenance of apartment buildings. If you want to sell people freehold fee simple titles to apartments, which is what Dick Dusseldorp wanted to do when strata title was developed in NSW – strata is not an Australian invention, no matter what people say, it's absolutely not, we copied it from overseas. But if you want to sell people freehold titles to apartments, as opposed to leasehold – which is how apartments are sold in the United Kingdom – you've got to deal with this rule, because you have to make people pay for the upkeep of the building. And that is the single most important thing that strata title legislation does. The levying provision – that is, the provision to pay money annually for the upkeep of the building – overrides this ordinary rule of property law. And it makes perfect sense – you've got to maintain the building. There's no problem with it, it makes perfect sense.

The problem is, however, as soon as you breach that rule – that little chink in the armour – you open the floodgates. As soon as you can make people pay money by virtue of owning

land you've created an income stream, and developers and the property strata industry absolutely recognise levies for exactly that.

It's one of the reasons why there are so many problems in strata-type developments, why there's so much consumer complaint – because people are paying for their levies, not simply for the upkeep of the building. But they're often paying for contracts that have been formed, negotiated by the developer, and the Body Corporate has been made to enter that contract, for example, for complex energy infrastructure or public open space, all sorts of things like that. And, as soon as you buy an apartment and you become a member of the Body Corporate, you are obliged to pay its debts. So whatever contracts it's entered into – you didn't negotiate them, you may not have even known about them – but you're going to have to be paying them.

So, we're now in a situation where, I think Strata worked pretty well for a long period of time, but I think we're running into real difficulties now. Sorry, I should have said this at the beginning – the starting point for this is strata is like democracy. It is not perfect, but it's the best system on offer.

And with all due respect, I know there's a lot of talk about things like Community Housing Trusts, but they concern me greatly. It's not legal title that makes housing affordable. It's that someone has given you the underlying land for free, or has given you a large whack of money. It's got nothing to do with the legal title.

And that concerns me. A lot of attempts to solve housing affordability have been through different legal structures, but it doesn't make a blind bit of difference what the legal structure is. Someone has to have provided a lot of the value to you for free for it to be affordable, and strata title can do that. There's no doubt strata title can do that. It's a very good system – it's just a question of how we use it. Strata is definitely the best system on offer. I'm not suggesting we use something else, but I think we need to be acutely aware of the way in which owners in strata title can be vulnerable to original owners – that is, the developer, and also people who are subsequently involved in the development. Loading land up with obligations to pay money that owners will have to pay through levies.

What we've seen in large-scale complex developments... Central Park is the plant-covered development that's opposite UTS next to Central Station in Sydney. Governments love to put it on brochures as the kind of poster child for high-density urban development with lots of sustainability features. The levies for a two-bedroom apartment in Central Park are \$15,000 a year. That is a staggering amount of money. There are some strata schemes that have levies of \$100,000 a year – they're the really high-end ones. But \$15,000 a year is a staggering amount of money. If you spent \$150,000 over 10 years on your free-standing home you would have done a substantial renovation of some description. But you can spend \$150,000 over 10 years in a strata apartment, and all you have paid for is lots of services for your strata manager and the various people who are running all sorts of infrastructure associated with the development. And it's possible that even the maintenance hasn't been done.

So, Corinne, sorry how much time have I got? I've just lost track.

Chair (Corinne Dobson)

You can keep going for a few more minutes, Cathy. That's fine.

Professor Cathy Sherry

OK. So, the real risk that I see at the moment is that there is so little attention and understanding in relation to strata title, that we are busy planning medium to high density cities with potentially a lot of the people who are involved in the planning – planners, architects, designers, landscape architects – who for very good reason want really good amenities, they want good open space, they want sustainability, infrastructure and housing for very understandable reasons.

But they have no idea that the people who will be paying for it are the young people and the old people who will be buying those apartments. And I apologise, James, but I don't think it's a question of choice. I think if we all had a choice, we'd be living on three acres in Vaucluse. Most of our housing choices are a result of having no other financial choice about what we buy. We buy what we can afford.

And there is, it seems to me, no possibility that the kind of complex strata, and I'm going to say the word stratum, which probably doesn't mean much to many people. But stratum subdivisions are large mixed-use subdivisions that are built on amalgamated sites, because councils and governments lack amalgamation for master planning. And what you end up with is an unbelievably complex beast of a development where everyone is legally yoked together. The costs that you are paying for the infrastructure can often be astronomical because so much infrastructure that has hitherto been publicly provided by governments or local councils is now becoming common property in a strata scheme or shared facilities in stratum subdivision. And if people don't know what that shared facilities in the stratum subdivision is, I'm happy to explain it in questions. But you need to know, because it's how high-density mixed-use development is being done. The legal structure is mind-bogglingly complicated, and it is incredibly expensive.

So, two things I will finish on. One, is when the ACT is thinking about medium density development, you *must, must, must* – and if anyone speaks to the planners in NSW Department of Planning – you must *not* make development that does not need to be strata title, strata title. So, you must not make semis and terraces strata title if they do not have common property or any significant common property – they should be ordinary subdivisions of the kind that we've seen for two centuries in Australia.

So, for example, the pattern book competition in New South Wales. It was – I don't mean to be mean to the students, because it was the students' design – it was great, but they had a row of terraces and they had shared parking. So, a row of terraces with shared parking on either end. The moment they put four shared parking spaces in they made it strata title. They just made all of those owners subject to hundreds of sections of legislation – obligations to pay levies, a private governing Body Corporate, the necessity to employ a strata manager, the whole catastrophe – for four shared parking spaces. So you cannot uncritically make things strata title if it doesn't need to be.

What's happened in NSW is we've got two-lot strata schemes, because the lots are apparently not big enough to do a subdivision. Strata is a Torrens title subdivision – that's what it is. It's just with complexity.

And then the second thing I would say is that everybody who is involved in the planning of high-density cities – from planners to architects to landscape architects – has to think about every single element that they put in a plan for amenity, for facilities, for good community

infrastructure. You need to think who owns it, who owns the private property title, because everything is owned by somebody. It's not possible for it not to be owned. It's not owned by the community. It's either owned by the local council, the state government or private citizens. Who owns it? And then who pays for it? And the answer is that if it's strata or stratum, unlike non-strata properties where people cannot be compelled to pay ongoing money because they own property, that's exactly what strata requires them to do.

If you're going to put in a trigeneration, plant a roof garden, publicly accessible open space, a shared facility in a stratum subdivision, an embedded network, all sorts of hydraulic infrastructure, batteries, you name it – if it is going to end up as common property, it is going to be paid for by those younger and older homeowners who you were possibly trying to provide affordable housing to.

I'll stop there.

Chair (Corinne Dobson)

Thanks, Cathy, that was great. I think it's really useful to have that perspective, because I think while we have had some focus, here and in other jurisdictions, around some of the issues around strata title, I think when we've been talking about missing middle housing it just hasn't really come into the picture as much. I think it's important to have that perspective there. I just want to go to questions. I can see we do have a hand up... David, did you have a question for Cathy?

David Lascelles

Yes, Cathy, I wonder if you could expand a little more in terms of what you've been saying about costs, and people getting yoked with them, what are the potential differences then between the ACT leasehold system and the freehold developments that you've talked about across the rest of Australia. What are the potentials there for the ACT in that respect?

Professor Cathy Sherry

I think this is going to be a really unsettling thing for people to hear, but you don't actually need a Unit Titles Act at all because you could impose obligations to pay money in leases. But the reality is that the ACT tends to follow other states. Now the queen of ACT strata who is the real expert is a woman, Susan Proctor, who's one of my fellow members of the Australian College of Australian Strata Lawyers. And Susan is the real expert in this area and I heard her give a great paper last week. The reality is the ACT copies the development model from other states. Most people wouldn't realise that technically you don't actually need legislation if you have a leasehold system, because you can put obligations to pay money in leases.

Having worked and being consulted on with lots of countries – Pacific islands, the Middle East – that also have leasehold systems, they still tend to use the strata title system because it's a form of property that developers recognise globally, particularly in the Pacific, with Australian developers building tourist resorts, or whatever. So, the reality is what you'll end up with in the ACT won't be very much different to other states because developers are working across borders and they tend to build the same thing.

David Lascelles

Thank you.

Chair (Corinne Dobson)

Libby, did you have a question? You may have popped your hand down? OK, maybe not.

So, one thing I'll just ask Cathy is if we are thinking about affordability – because often the argument is made that strata will lead to much more affordable housing. But do we need to consider, if we're thinking about strata-titled housing, those ongoing costs as part of relative affordability? I think there's often a focus on the ticket price when something's sold, but are those other costs something we also need to be thinking about when we're talking about affordability? If we're looking at that type of housing?

Professor Cathy Sherry

Absolutely. At the moment, after the ATO, the Australian Tax Office, the biggest instigator of personal bankruptcy in NSW are strata Bodies Corporate. That means people lose their homes. Now there's a lot more to unpack in that, but that's absolutely an example.

My kids are in their late 20s, early 30s, and knowing what I know about strata, I advise them to do anything not to buy strata. Buy outside Sydney, don't buy in Sydney; don't buy into a development where you could end up getting whacked with massive special levies, or with levies that will just keep going up and you don't really have any control over. It is a huge financial risk.

It is also a financial risk for community housing providers. I held a day with Mission Australia last year at UNSW. Because of the uplift in New South Wales that developers are getting if they include affordable housing in their development – developments are getting a 30% uplift – a lot of Community Housing providers are acquiring stock. Sometimes it's salt and pepper apartments. Sometimes it's a stratum. So there may be an entire tower, maybe five floors of a building they're buying into, where there are these really complex stratum developments. At the outset, when they buy, they really can't know what the real costs will be. The contracts will disclose there may be an embedded network. There may be a trigeneration plant. There may be contracts for this, contracts for that. They've got no idea what the real costs are.

And I think that community housing providers, and funders, should be extremely concerned about this. Particularly given the fact that a lot of this community housing sadly only has a 15-year limit on it – so a lot of the investment that is happening on that basis will turn back into market housing in 15 years. I'd be saying to the funders, who actually have quite a lot of faith that they might be able to help fix some of this stuff, that you need to understand what those costs are going to be. Because in 15 years' time – if that development is riddled with building defects, everyone's complaining about the contracts and the fact that they're tied into contracts they can't get out of that are exorbitantly expensive and exploitative – then the asset that you're going to be attempting to sell in 15 years' time is maybe not going to be worth what you think it's worth, because of all of these burdens that are being imposed.

Chair (Corinne Dobson)

Great point. Libby – did you have a question?

Libby Amiel

Yes. The ACT Assembly is just in the process of writing a report from a major inquiry into strata that got more submissions than any other inquiry they've ever done.

The UTMA [*Unit Titles (Management) Act 2011*] is largely unintelligible to owners, and sadly, managers. We need major amendment of that legislation to match what is being done with planning and the constant construction of enormous strata buildings in the ACT. I agree entirely with Cathy. I constantly get emails on behalf of Owners Corporation Network, from owners in developments that are dual occ's, or three or four units with virtually no common property. And for God's sake, why are they strata development?

But we need major legislation amendment in the ACT to make the system work. Maybe the wrong forum to say that, but God Almighty, we need it. Thank you.

Professor Cathy Sherry

It's so not the wrong forum, because the reality is if we are talking about medium to high density development, it will be strata – a lot of it has to be, there's no choice, some of it doesn't have to. But we have to connect these two things. We cannot keep planning high-density cities with no understanding or attention to the reality of what those high-density cities are. I know for example in NSW... I work a bit with Fair Trading, who are just working so hard to try and fix strata law.

And it just becomes this endless process of amending sections of legislation. I've been involved in strata reform for decades now, and over the years I've had so many phone calls from junior people in various departments all across Australia saying, I've got this section of this Act that I have been told to look at, could you help me? And I'll say to them, so how long have you been working on this for? And they'll say, six weeks. Are you a property lawyer? No. Do you have an experience of strata? No.

What we're asking of them is just impossible. I feel so much for Fair Trading departments. They are working so hard, but we just need everyone to understand strata better. And we need to stop doing piecemeal reform of strata legislation that needs to be done properly, with a realistic amount of time by the Law Reform Commission.

Libby Amiel

I Agree. Thank you.

Chair (Corinne Dobson)

Thank you. There was some good questions there in the chat. Ed, you've got your hand up... There's actually quite a bit there in the chat, and I think it's provoked quite a bit of discussion, Cathy, which is great. But I'm just mindful of the time. So, I might now just go to our final speaker and perhaps – I think we're going to be running out of time here – but we'll see if we can come back to some of those questions. So now to our final speaker... as I mentioned, which is Nathan Dal Bon... So, I've just realised that I don't have your bio in front of me! Just give me a moment.

Nathan Dal Bon

That's OK. You can save on time if you want.

Chair (Corinne Dobson)

It's OK. You have a very long bio – and, I must admit, Nathan and all of the speakers are very experienced and have somewhat intimidating and long bios that are very impressive. Now, just as I try and find the document... where it is...OK, I do have it now in front of me!

Nathan is the CEO of CHC and he brings extensive experience in public policy and advisory roles with deep expertise in housing policy. This includes spending six years as CEO of Housing Australia and its predecessor, the National Housing Finance and Investment Corporation, where he was the inaugural CEO and led the design and delivery of major national initiatives including the Bond Aggregator, the Home Guarantee Scheme and the Housing Australia Future Fund, alongside an influential research programme which included the State of the Nation Housing Report. Nathan has extensive experience in roles across the Commonwealth and as advisors to shadow treasurers and as a non-executive director of AHURI as well as representing Australia at the UN on Sustainable Development Financing, among many other things as well!

It's so wonderful to have you with us, Nathan. Over to you. Thank you.

Nathan Dal Bon

Thanks, Corinne, and good to be here. I must confess, after hearing a discussion on LVC planning and strata reform, I was expecting to feel a bit sleepy by this point, but I have to say it was that I've learned a lot and it was truly fascinating conversation across all the topics.

So, I'll just be very brief. I just want to talk a little bit about CHC and bringing a community housing provider perspective. And on the missing middle, I guess I can talk in general terms. There are a few specifics that I can highlight from a CHP point of view, but then also maybe I can touch on quickly some current initiatives, given the focus that the government has in terms of achieving a target of 5000 more social and affordable homes, and public, over the next five years.

So, CHC – just quickly for people don't know – we're a Canberra-based CHP that has been operating over 25 years. We have about 1000 properties that we manage or own, largely across the ACT. Also, probably a little bit different to some other CHPs, most of our history has been undertaking developments whereby we've sold off a lot of the properties and then used the development margin to cross-subsidise the retention of typically long-term affordable rentals.

I think one of the important lessons from that history, and also moving forward, is the importance of securing land for Community Housing Providers. And I think that as a Community Housing Provider offering subsidised, or largely subsidised, rental services, when you're out there competing for land, you're never going to compete with private players. The inherent value of the land is never going to be the same because you're essentially offering a sub-market product.

So, while I recognise that increasing the amount of supply of land is going to be important in terms of accommodating the increase in population, probably one of the things that will need to be considered is that if you're going to be potentially improving supply across these RZ1 sites in particular, that while this land will be available to Community Housing Providers to purchase, unless there is some form of either a subsidy – like at the moment through the

HAFF round through an availability payment – or unless there's some other form of incentive, it is going to be very difficult for a CHP on the basis of returns to compete against a private market developer or participant.

I would suggest in terms of going forward that it will be important to consider how you ensure you have that mixture of cohorts across regions within the ACT or areas across the ACT. If we're talking about vibrant communities – and it is good to hear Ed talk about some of those aspects – we know that increasing supply is probably a necessary and important aspect of improving affordability, but it's not necessarily the only consideration. At the moment, in my experience, within the ACT there's lots of projects out there that have DA approval – so there's plenty of potential supply – but these projects simply don't stack up at this point. There's a lot of other factors that will impact on affordability, but then it's not just about affordability. I think Corinne you mentioned equity and affordability. And I think there's also that livability and community aspect that go with having a vibrant, successful community.

It's good for Ed to point out the livability aspects, the amenity, infrastructure. And then also, I think, having diverse communities through ensuring that we don't have income lines where people can purchase. That's really important in terms of having diverse, vibrant communities.

Picking up on some of the initial initiatives, which I think will play into that increasing supply of new subsidised housing which I think is important going forward. As other people have pointed out, in the overall supply of public housing, social housing, affordable housing, the numbers have continued to decrease as a proportion of our population nationally. So the ACT is not alone in terms of struggling to generate sufficient supply. And there's a role for government in terms of not just facilitating the release of land and providing subsidy, but also a role for government in terms of the provision of certain types of subsidised housing, particularly for people that need additional support with wrap-around services. There's a clear role for government, in my view, to provide those properties on an ongoing basis.

I don't see Community Housing Providers as an alternative to the role of government. I see it as complementary. And I think that's important in terms of moving forward as well – that we can all work together and complement what each other are doing in terms of servicing the various cohorts to ensure that Canberra is an affordable place to live, not just for those with an income or those with a higher income, but for those that basically have no market income and rely on welfare, and those that are basically working poor. I think all of these groups are in need of assistance. So some sort of strategy that covers the housing continuum is really important.

Just to pick up on the LVC side of things. I'm interested obviously in the long-term future, probably the next five years is my immediate focus. And it's good to note that the government has an ambitious target in terms of overall supply numbers, but then in particular for the subsidised housing we'll be looking at 5000 over the next five years. And certainly, from the CHC perspective, we're looking to step up in a substantial way as an organisation. Part of that is being opportunistic – so tapping into existing ACT or Commonwealth funding rounds, because that is one factor that can unlock new supply of social and affordable housing. The other factor for us is also undertaking our own developments, that model that I referred to that CHC has used for the last 25 years. So that in some cases you can control your own destiny in terms of development pipeline – you're not waiting for the next funding round.

I think the recent changes that the government have made on LVC and TPP – the Territory Priority Projects – are important steps in a direction of unlocking that supply as well. The LVC changes – where there's a possibility to reduce the LVC charges for developments that are CHP – is undertaking some important change. And the ability to potentially qualify for TPP is also an important change because, as we know, some CHPs have been hit quite hard when it comes to undertaking zoning changes, and the holding costs and the delays and so forth for a CHP are quite substantial and we don't have deep pockets like developers. So I'm feeling quite optimistic that there's an ability for us to really make a head start in terms of making some inroad into those overall targets and setting us up for beyond through those changes.

From an LVC point of view – certainly government has given relief for LVC in the past – but having that framework and certainty when we assess the feasibility of new projects makes it very transparent, clear and upfront in terms of how we can make that project work. And I think this whole notion – particularly for subsidised housing – where the government will take with one hand and give back with the other is, in my view, inefficient. The ability to avoid that LVC, use that concession to then increase the amount of long-term affordable rentals that we can retain – I think that's a very smart and efficient thing to do.

Just to finish on my last point, Corinne, so there's time for questions.

I think access to land remains one of the most important aspects, whether it's through the missing middle, or whether it's through, for example, having access to auctions of land from the SLA when they come up. Again, it's good to see that there's initiative there – that where they've identified two blocks of land that I'm aware of for CHPs to bid in on. But obviously if we want to see the numbers it would be good to scale that and embed that moving forward. Because if you're a CHP and you're looking to deliver a sub-market product, the price that you can pay to make that particular project viable is going to be substantially less and different to what you see if it was purely market.

I'll finish there. Thanks Corinne.

Chair (Corinne Dobson)

Thanks very much, Nathan. Now let's open it up to questions.... OK, I can see that we don't have any questions yet, but if people want to put their hands up...?

Maybe I'll just go to one of the points that you mentioned, Nathan. We've obviously had a discussion around LVC and quite a bit of time talking about that. It is something we are also grappling with, in terms of our position on the remissions being proposed, or that has the government have announced, for social and affordable housing. I take it from what you're saying, that you see that as a positive step? Because we recognise that feasibility and financing are issues for Community Housing Providers, but is that the best way to address this – through remitting the LVC – or should we be looking at other mechanisms?

Nathan Dal Bon

I do not think it is a one-size-fits-all. And I should say, to echo Tim's point, I have no issue with LVC as a concept, where you are capturing value uplift for the benefit of taxpayers. I think the issue for me is, where we can get access to land, paying the LVC obviously detracts from what we can deliver. It just means that with my other hand, I have to go and

ask government for a subsidy if I want to still deliver the same amount of subsidised properties. I think it's more efficient when I'm seeking to buy government land and I get the LVC waived. If I'm buying land or properties off a private developer where LVC has been applied, and I still have to go to the government and ask for a subsidy, then in my view it's far cheaper and more efficient if I can go and access land and not pay LVC, and not pay developer margin, in terms of buying or undertaking the development myself.

So, do I think it is enough? No. Do I think there's still a need for some form of ongoing subsidy, like an availability payment or potentially an upfront capital payment? Yes. If we want to see the sort of scale and growth, then it does need to be supplemented by other initiatives.

Chair (Corinne Dobson)

And are there other things that you can say that could potentially be done? Obviously, we need to be looking at increasing the full spectrum of social and affordable housing that includes public, community housing (that's social housing) and affordable housing. But are there other ways that we should be looking specifically at for missing middle? Are there particular policy levers or mechanisms that we should be recommending to the government, so that we can ensure that some of that is social affordable housing? Because it's a bit different when we look at greenfield development or other types of development, where we might be able to require developers to have a certain amount allocated to social or affordable housing. But are there particular mechanisms for missing middle housing?

Nathan Dal Bon

Look, I think there are mechanisms and, as I was saying before, I think while we would have the ability to purchase land the same as private participants, it would be difficult for a CHP to compete, given what we offer is essentially a submarket product. There would need to be some consideration given as to how you ensure that there is a portion of social and affordable that gets released or unlocked as a consequence of this infill. There is a range of different options that you could consider in that space. I'm not wanting to trigger the strata conversation, but I completely understand the concerns and the issues. But, for example, for in-fill in NSW, the uplift in terms of floor space and then having that requirement – that's something. Do you get bonuses, for example, when you're looking at what you can do on a particular site, subject to the constraints, if you were to offer it, or a portion of it, for social and affordable?

If they are going to be collecting LVC or other charges on these infill developments, is there an opportunity to hypothecate some of that additional revenue for the purposes of investing in social and affordable? For example, the City of Sydney have a charge which applies to new developments, which then is basically hypothecated to a CHP to undertake investments in social and affordable housing.

There is a spectrum of options, and they are just two that come to my mind. But whether they are the best for the ACT – that is contestable.

Chair (Corinne Dobson)

Treasury often don't like hypothecation when it comes to taxes and charges, but certainly at the moment the Lease Variation Charge just goes back into consolidated revenue.

Well, I haven't managed time very well because we only have 15 minutes for the panel discussion. Just before we do that, does anyone have any final questions for Nathan? No... well, in which case, thank you very much, Nathan.

Panel discussion and forum closing

Chair (Corinne Dobson)

I might now just bring us back to the broader group. We did have questions that people have asked during the discussion. We don't have a lot of time, so we will see what we can get to.

I will start off by asking a question. As I've mentioned previously, the inquiry is underway in the ACT, we have had the hearings this week, and one of the questions that we were asked, and I know has been discussed, is around what the relationship is between planning reforms, supply, and affordability. A particular question that was asked to us was around filtering, which is, for those who are unaware of that argument, the idea that as new homes are built, older homes will become more affordable as higher income households move into new stock. And so, essentially, increasing the supply of housing through missing middle housing will have overall the effect of improving affordability. I just wanted to throw it over to the panel to see if they had any views around this. Maybe... Tim?

Dr Tim Helm

You summarise the basic principle very nicely, and so whoever you listened to on the inquiry, who summarised the basic principle, did a good job. It is a strange thing that this word and this concept continue getting raised. It's completely obvious from an economic perspective that when more of any good is produced in a market, even if the goods are of different types, it tends to push down the price of all types in the markets. When somebody buys a new car and sells an old car, we expect the new car does contribute to the car stock. And it's just the same way for housing, but I'm not sure who continues raising this as if it's somehow highly determinative of policy outcomes.

Certainly, when new housing gets built, it's at a high price point because it's usually built to a higher standard than a lot of old housing, like for size and location. But it is still additional housing stock. I think the best way to think about housing affordability is that the stock of people, and all their dollars and their preferences, are competing for the stock of housing and all of its locations, and there's a great big mash up where everybody's pitching what they can to rent or buy this particular house or that particular house, and the rental price emerges as the price that matches the stock to the people. Now naturally in that process the best locations and the highest quality housing goes to people with the highest income. But if such housing is built, if new missing middle housing unlocked by the reforms is luxury townhouses and luxury apartments, this is perfectly good from the point of view of increasing the housing stock – if that happens. I suppose the key point here is that from a government point of view, the right policy approach to achieving your policy goals depends on what those goals are. And when it comes to housing affordability, the concern is always for people that struggle to afford housing.

Rezoning to enable more market rate housing to be built and therefore filter – or you could say trickle down – to those at the bottom of the income distribution is a very indirect way of solving your problem compared to just building houses or supplying money to community

housing organisations such as Nathan's, or tax breaks to such organisations. So simply from the point of view of solving the acute end of housing unaffordability, clearly don't think about zoning. It is social, affordable and community housing that is the right way. And I suppose that's a really obvious point: that people bring to housing markets the dollars they have, and the markets just distribute housing according to your willingness to pay, which is to say, your ability to pay.

If we want housing to go to those at the bottom, it is going to have to be a government, state or territory government responsibility to do that directly to counteract these effects of the market through organisations like Nathan's.

But the filtering point is simply to say all new housing is good. New housing is good housing from the point of view of affordability, but directing policy efforts, and especially expensive policy concessions, at the right end of the market is a smart thing for a government that really wants to maximise the bang for buck.

I made an aside comment in my earlier remarks and I might just repeat it. I think it's important for people working and advocating in this area. When you issue concessions that skew land purchases away from a private developer who might supply market-rate luxury apartments, and then skew it towards Nathan's organisation, which can outbid them, you're skewing quality, well-located land and construction resources towards a housing provider that's going to look after people at the bottom of the income distribution.

Now that's good policy - to skew ownership in that way if you're trying to look after the people on the bottom. Just in the same way that first-home buyer tax concessions and tax breaks tend to unlevel the playing field – or level it, depending which way you look, compared to existing owners who may have built wealth in just the same way – unleveling the playing field to give social and affordable housing providers a leg up in that land purchase may be a really smart way of achieving the policy goal. But, if you're trying to use tax breaks to get more housing built per se – rather than to just redistribute who ends up building it – then you're probably going to fail. These tax breaks are only going to be factored into the price of land, and it's going to fail because the market for land development has a pace at which it wants to bring market-rate housing to market, and at a pace at which it wants to develop land. And you cannot overcome that pace with subsidies – all you will end up doing is lining the pockets of landowners.

I think it's a really key point. I know the ACT government has spoken about missing middle LVC concessions, and also social and affordable housing LVC concessions. I see the first one as probably a low-value use of money if you are trying to make housing cheaper, and then the second one as probably a high-value use of money.

I'll leave it there - thanks, Corinne for the question.

Chair (Corinne Dobson)

Cathy, you've got your hand up – did you want to make a point?

Professor Cathy Sherry

Just a quick and important point about supply, which is really relevant to apartments. I'm not an economist, but even I can work out that supply has no meaning without reference to demand. So, the two things go hand in hand.

And of course – Ed mentioned this – the appalling tax policies we have that incentivise people of Ed and my age to bid against our own children and outbid them. I get a tax break for doing so, and I already own a house if I bid against my own children. These tax policies are absolutely mad, and they profoundly affect the apartment market more than anything else, because the apartment market offers investors widgets that all look the same. Almost all apartments are built speculatively for the investor market. I was writing to Hazel Easthope yesterday, and Hazel's latest figures on the number of owner-occupied apartments is horrifying: it is actually under 30%. So this is not affordable housing in the sense of what Shelter is concerned with, which is community housing.

I think Australian governments are very dishonest every time they utter those words, 'affordable housing'. Most Australians don't know that this has a technical meaning – they think affordable housing means housing that people could afford to buy. But if the housing you are attempting to supply has an artificially inflated demand because it's being bought by people who already own a home, then you know you're shooting yourself in the foot.

And the theory that if we incentivize investors – and there's a big foreign investment piece in some markets because of further approval for new builds – the idea that incentivising investors will get to more housing, economists can speak to more than this, but I've been watching this happen for over 20 years now and it doesn't appear to have got us affordable housing.

Chair (Corinne Dobson)

Yes, certainly we need to look at demand... There has been an almost singular approach from governments looking at supply. But we need to be looking at both sides of the equation, both demand and supply. And part of that demand piece is very much the tax settings, as has been mentioned.

We don't have much time left. Are there any final thoughts from the panel members that they want to bring to the discussion? Particular things that they think need to be prioritised? I might just start with you, Ed. Just keep it brief if you can.

Dr Ed Wensing

No. I loved Cathy's presentation. Thanks, Cathy – you hit the nail on the head with the strata title stuff. Thanks. And Tim as well. I've got nothing further to add. Thank you.

Chair (Corinne Dobson)

So much has been covered. There's quite a lot of discussion in the chat and it's quite a complex and multi-dimensional area of policy, and one that we are certainly still continuing to grapple with some of the elements and what the best approaches are. Did any of the other speakers just want to have any final points?

James Bennett

Corinne, I might just come back to a few elements. It's been a fascinating discussion and we have quite a few representatives from different government agencies on the call. And I'm sure for all of us, it's been a really great experience to hear the different views.

We are aware of a lot of these issues, and in some areas with our housing and strata policy we're doing well, and in other areas there's clearly work that we need to do to keep making sure that the system is delivering outcomes for the community that we serve. So, I really appreciate that discussion today and have made some good connections for further conversations, to keep trying to understand these issues and what options we have to keep on improving the planning system, but also all those things around the planning system that are integral to how people live and operate and move around the city, and making sure that the rules and regulations we have support people rather than cause grief or add burden to their lives. So, yeah, it's been a great discussion. Thank you.

Chair (Corinne Dobson)

Thank you very much. Each of the topics we have covered have had some depth and intricacy in them, and they are so important. I feel we could have had a webinar on each one of these, and a challenge today has been traversing all the different things we've covered. But I've certainly found it incredibly useful and insightful.

Thank you so much to all of the speakers for the expertise and insights that you have brought to the discussion today. And thank you also to everyone who has joined us – it has been great to have that level of engagement. It is clearly a discussion that we are going to continue to have, and we certainly hope to pick up some of the issues we've talked about today in some of the work that we'll be doing.

Just before we do wind up, if you're not already on our newsletter and events mailing list, we'd love you to stay connected. We are hoping to have more webinars and events this year. Deb has popped the link to our newsletter and our events mailing list into the chat. So, if you are not already signed up to that, I encourage you to do so.

We are rapidly approaching 3:30 and it is a Friday afternoon and I don't want to go overtime. So, thank you again everyone for joining us and I hope you have a relaxing weekend. Thank you very much.