



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND URBAN SERVICES

REPORT NO.59

OCTOBER 2000

**EXAMINATION OF ALLEGATIONS OF POSSIBLE IMPROPER
INFLUENCE OF A WITNESS**

Finding and recommendations

The committee is unable to conclude whether an improper influence did or did not occur in relation to evidence given to the Standing Committee on Planning and Urban Services on 5 May 2000.

The committee recommends:

- (i) *that members of the Territory's parliament note the contents of this report and draw their own conclusions about the validity of the evidence provided to the committee (noting that leave is being sought to table in the Assembly – at the same time as this report is brought down - the six key documents referred to in this report);*
- (ii) *that committees of the Assembly advise witnesses at public hearings of their rights and responsibilities by using the following form of words:*

You should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action (such as being sued for defamation) for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

The Standing Committee on Planning and Urban Services was established on 28/4/98 to inquire into and report on planning and lease management, road and transport services, housing and housing assistance, government purchasing and public utilities purchasing, electricity industry and regulation, construction industry policy, parks and forests, private sector employment inspectorate, building services, environment, heritage and municipal services and any other related matter (*resolution of appointment, as amended on 25/11/99*).

Committee members

Mr Harold Hird MLA (Chair)

Mr Dave Rugendyke MLA (Deputy Chair)

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Secretary – Mr Rod Power

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BACKGROUND TO THE INQUIRY

1. On 5 May 2000 the then president of Gungahlin Community Council, Mr Gower, addressed a public hearing of the Standing Committee on Planning and Urban Services in relation to the committee's inquiry into 'proposals for the Gungahlin Drive extension'. Mr Gower tabled the Council's written submission to that inquiry. The submission was headed:

'The Gungahlin Community Council wishes to state its support for the proposed alignment of Gungahlin Drive to the east of the Australian Institute of Sport, connecting with Caswell Drive at Belconnen Way.'

2. After tabling the Council's written submission, Mr Gower responded to questions by members.

3. When responding to a question about the Council's support for the government's preferred road alignment (which is to the east of the Australian Institute of Sport with links to both Barry Drive and Caswell Drive), Mr Gower stated that:

'We [the Gungahlin Community Council] do not support the full government option... We have not supported [the link between the eastern route and Barry Drive for the reason that] we see Gungahlin Drive mainly as a north-south route for people to go between the very southern areas of Canberra and Gungahlin.'¹

4. In response to a question about why the Gungahlin Community Council supported an alignment to the east of the Australian Institute of Sport, Mr Gower stated:

'Pressure was put on us to a degree that if we did not support the government's option, which is the eastern alignment, we basically would not get a road...
'We had Brendan Smyth [Minister for Urban Services] at our March monthly meeting of the Community Council and, in a private discussion as he was

¹ Transcript of public hearing on 5/5/00 p173. The government's preferred route is to the east of the AIS with links to both Barry Drive and to Caswell Drive.

Allegations of possible improper influence of a witness

walking out of that meeting, he said to me, quietly, “If the eastern route does not get up, then Gungahlin won’t get a road’...
‘[The position in which the government placed the Council] certainly flavoured how we prepared the submission but there are other factors involved as well.’²

5. Members of the committee, and other members in attendance on 5 May 2000, expressed concern at any suggestion of pressure from the government affecting the decision of Gungahlin Community Council in relation to a preferred route for the Gungahlin Drive extension.³

RESOLUTION OF THE ASSEMBLY

6. On 25 May 2000 the Legislative Assembly passed the following resolution:

That the Standing Committee on Planning and Urban Services examine the allegations of the possible improper influence of a witness, Mr Gower, in respect of evidence to be given to the Standing Committee on Planning and Urban Services, and report to the Assembly by the last sitting day of June 2000.

7. The reporting date was subsequently amended to the last sitting day of October 2000.

CONDUCT OF THE INQUIRY

8. On 26 May and 31 May 2000 the Standing Committee on Planning and Urban Services considered the manner in which the inquiry should be handled. In order to clarify some matters, the committee sought advice from the Clerk of the Assembly.

9. On 1 June 2000 the A/Clerk provided advice to the committee.

10. On 5 June 2000 the committee sent a letter to Mr Gower informing him of the Assembly’s resolution and asking him to clarify, in writing, the evidence he gave at the public hearing. The letter pointed out that the committee is particularly interested in the reasons leading him, and the Gungahlin Community Council, to reach a final view about the preferred route of the proposed Gungahlin Drive extension. Further, the letter stated that, on receipt of further information from Mr Gower, the committee might invite him to address it again. If this occurred, the letter stated that he might like to be accompanied by advisers. Also, he might like to ask the committee to hear him in confidential session.

² Transcript of public hearing on 5/5/00 p175, p177 and p182 (respectively)

³ The other members of the Assembly attending the hearing on 5 May 2000—apart from the three members of the Planning and Urban Services Committee—were Ms Tucker MLA and Mr Stanhope MLA.

11. On 3 July 2000 Mr Gower responded in writing. His letter (which included certain attachments requested by the committee in relation to its inquiry into proposals for the Gungahlin Drive extension) stated that neither he, 'nor any member of the Council', wished to address the committee. In relation to the evidence he gave at the public hearing, the letter stated:

'The transcript is essentially correct and I have no objection to its inclusion in the official record.'

12. On 13 July 2000 the committee again consulted the A/Clerk about procedural aspects of the inquiry.

13. On 3 August 2000 the committee acknowledged receipt of Mr Gower's letter and asked for further written material and assurances that the Council's written submission and Mr Gower's oral testimony were accurate statements of the views of Gungahlin Community Council. The committee's letter stressed the importance of the inquiry in the following terms:

'The inquiry is important for two reasons.

'At the general level, it is fundamentally important that testimony given to a parliamentary committee is not improperly influenced in any way. This reflects the fact that the Legislative Assembly relies on the truthfulness and accuracy of evidence tendered to parliamentary committees to facilitate the Assembly's own consideration of the issues.

'At the particular level, the inquiry is important because members need to have confidence that statements or positions attributed to an organisation such as Gungahlin Community Council are what they claim to be—that is, that these statements do indeed represent the views of members of the organisation.'⁴

14. On 26 September 2000 the committee received Mr Gower's written response (with attachments). Mr Gower's letter stated that the written submission by Gungahlin Community Council:

'had been endorsed by the Executive [of Gungahlin Community Council] for presentation to the Standing Committee at its hearing on 5 May 2000.

'I read from... [that] statement [which] was an accurate reflection of the views contained in the [written] submission.'

15. Mr Gower's letter also stated:

'There was never any improper influence over myself or any other member of the Gungahlin Community Council on a decision to support any particular route. As early as mid-1998... [the Council indicated that it] would support either proposed route but [that] after the government presented its preferred route, we would fully support that route.'

⁴ Emphasis in original

16. Members considered Mr Gower's response on 29 September 2000 and on 6 October 2000, when they again consulted the A/Clerk about procedural aspects of the inquiry.

KEY DOCUMENTS

17. The key documents of relevance to the inquiry are:

- submission by the Gungahlin Community Council to the committee's inquiry into proposals for the Gungahlin Drive extension. The submission was lodged by Mr Gower [then chair of the Gungahlin Community Council] at a public hearing on 5 May 2000;
- transcript of oral evidence given by Mr Gower at the public hearing on 5 May 2000;
- correspondence from the committee to Mr Gower (dated 2 June 2000);
- correspondence from Mr Gower to the committee (dated 3 July 2000), with attachments;
- correspondence from the committee to Mr Gower (dated 3 August 2000); and
- correspondence from Mr Gower to the committee (received 26 September 2000), with attachments.

18. The committee authorised publication of all of these documents. They have been tabled in the Territory's parliament at the same time as this report was tabled, and are available from the Assembly Secretariat.

CONCLUSION

19. The committee unequivocally accepts that Gungahlin Community Council supports the construction of Gungahlin Drive extension at the earliest possible time. The committee also accepts that the support of Gungahlin Community Council for the extension of Gungahlin Drive pre-dates the establishment, on 21 April 1999, of the committee's inquiry into proposals for the Gungahlin Drive extension.

20. In relation to the alignment of Gungahlin Drive extension, the committee notes the difference between the position of Gungahlin Community Council and that of the government. While both support an alignment to the east of the Australian Institute of Sport connecting to Caswell Drive, the government wishes to construct a link between this road and Barry Drive while Gungahlin Community Council (according to Mr Gower in his oral evidence on 5 May 2000) does not support the Barry Drive link.

21. The difference of view between the government and Gungahlin Community Council possibly indicates that, if any pressure was put upon the Council by the government, it did not lead the Council to *fully* endorse the government's preferred road alignment.

22. The committee also notes Mr Gower's statement that the position in which the government placed the Council was *one of a number of factors* influencing the Council's decision on a route for Gungahlin Drive extension. The committee considers that it is unclear whether the Council's position was influenced by the Minister's alleged action or by a range of other issues.

23. In light of these factors—and in light of Mr Gower's written assurances that, firstly, the written submission by Gungahlin Community Council is an accurate reflection of the views of that Council and, secondly, that there was no improper influence upon himself or any other member of Gungahlin Community Council in relation to a preferred road alignment—the committee is unable to find that the Minister for Urban Services (and/or government officers) improperly pressured Mr Gower, or the Gungahlin Community Council, in relation to the alignment of Gungahlin Drive extension.

24. The committee is unable to draw any substantive conclusion that an improper influence of the witness did or did not occur.

25. Arising out of this inquiry, however, the committee considers that there is a case for strengthening the public hearing process of the parliament by specifically reminding witnesses of their rights—and responsibilities—when giving evidence to a parliamentary committee.

26. The traditional manner in which this was done incorporated a procedure whereby witnesses took an oath or affirmation that the evidence they were about to give was truthful. This formal procedure indicated to witnesses that giving evidence to a parliamentary committee should be treated in a serious and responsible way.

27. Over recent years, the practice of administering oaths or affirmations has become less common in Australian parliaments, in part because most parliaments have the power to punish a witness who gives false evidence, even when not under oath. Were false evidence to be given, parliament may regard this as a contempt.

28. Committees of the Legislative Assembly of the ACT have not adopted the practice of swearing witnesses. Most committees have tried to put witnesses at ease by utilising a less formal process.

29. Members of the Standing Committee on Planning and Urban Services do not see a need to swear in witnesses at this time, but they do consider that witnesses should be reminded of the significance of providing evidence to parliamentary committees. When appearing before a public hearing, witnesses should be told about the protections

available to them and about their responsibilities to be truthful. An appropriate form of words is the following, which has been prepared in consultation with the A/Clerk:

You should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action (such as being sued for defamation) for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

30. The Standing Committee on Planning and Urban Services is aware that at least one Assembly committee has utilised a similar form of words at some public hearings. The committee considers that it may be opportune to introduce the practise on a consistent and regular basis. The Standing Committee on Planning and Urban Services intends to use the above form of words at its future public hearings; and it recommends that other committees of the Territory's parliament do the same.

APPRECIATION

31. The Standing Committee on Planning and Urban Services records its appreciation for the assistance and professionalism of the A/Clerk (Ms Weeks), who provided advice to the committee in relation to this inquiry.

Harold Hird MLA
Chair

17 October 2000