

**2002**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO REPORT No. 9  
OF THE STANDING COMMITTEE ON  
PLANNING AND THE ENVIRONMENT**

**Planning and Land Bill 2002 and  
Associated Legislation**

**TABLING STATEMENT**

**Circulated by authority of  
Mr Simon Corbell MLA  
Minister for Planning**

Mr Speaker

For the information of members I present the Government's Response to Report No. 9 of the Standing Committee on Planning and the Environment, titled 'Planning and Land Bill 2002 and Associated Legislation'.

In doing so, I wish to extend the thanks of myself and the Government for the efforts of the Committee members and secretariat in producing this report. The report and the Government's response I am sure, will assist members in their deliberations on these very important issues.

I also extend my appreciation to those who contributed to the Committee's proceedings and deliberations. Submissions to the Committee covered many aspects of the legislative package of Bills. The Committee's work has brought out issues requiring more further clarification, identified some misunderstanding and flagged matters for further consideration debate. It has contributed significantly to the consideration of the legislative package.

Members will recall that this matter was referred to the Committee to enable more time for people in the broader community to participate, through an Assembly inquiry, in the consideration of the package of legislation.

In its report, the Committee made 15 recommendations, and presented 7 further conclusions.

In response to the recommendations, the Government agrees with 9, notes 2 and does not agree with 4. In other words, a clear majority of the recommendations are agreed.

In particular, the Government has given considerable thought to the first recommendation, which relates to the timing of debate of this legislation. The Committee is concerned that we should not rush passage of the Bills – that more time is needed to examine issues such as the manner of implementation of the new structures.

The Government does not believe that it is rushing debate. This legislation was developed through almost six months of extensive consultation and also consideration by an expert advisory group.

The Government is most concerned that implementation of this legislation should not be rushed, because that is where, having set up an effective governance structure, most damage can be done to the ability of the Planning and Land Authority and the Land Development Agency to perform effectively. I make the following observations in support of the Government's position:

- The main Planning and Land Bill was tabled on 27 June 2002 - almost five months ago. In that time, the Planning and Land Development Taskforce has undertaken a comprehensive and thorough program of briefings and presentations to a wide selection of organisations, as well as to members and the Planning and Environment Committee.

- The Taskforce held many key informant interviews throughout the first half of this year, and was advised at all times by an expert advisory committee, comprising highly experienced and respected people from a range of planning and land related backgrounds.
- It is time for the Assembly to consider the package of legislation that is based on the pre-election policies contained in 'Planning for People'.
- The passage of these Bills before Christmas will provide the certainty needed to allow the smooth transition to the new structures on the proposed date of 1 July 2003. Apart from the major task of merging and reshaping the existing organisations and ensuring appropriate financial and budgetary bases, the Planning and Land Council is to be established, a Chief Planning Executive recruited, a Land Development Agency and its Board established, and a Chief Executive Officer appointed.
- By 1 July 2003, it will be very nearly a full year since presentation of the principal Bill in this package.
- Given the amount of consultation and discussion on the policies underlying the proposal, and the lengths to which the Government and the Taskforce have gone to explain all of the details, the Government believes there has been more than enough time to consider and pass this legislation to provide for a commencement on 1 July 2003.

Only four of the Committee's recommendations are disagreed. Before discussing the Government's proposals for changes to the package in response to the Report, I should explain the

Government's position on those areas of disagreement. The four recommendations are as follows:

- *“That a direction of the Minister and a statement of planning intent be tabled in the Assembly on the next sitting day after they have been given to the Authority.”*

The provisions in the Bill reflect standard tabling timeframes and the Committee has not, in the Government's view, presented persuasive reasons why they should be changed. However, the Government is open to further discussion on this issue.

*“That the relationship between the Authority and the Assembly be formalised by requiring the Authority to report on its activities to the appropriate Assembly Committee at least once every six months.”*

Because the Planning and Land Authority will be subject to the provisions of the Financial Management Act, the Annual Reports Act and other Government reporting requirements, the Government believes that the recommendation proposes unnecessary burden on the Authority.

- *“That the provision relating to the Authority delegating its function of granting leases be deleted from the Bill to make explicit that the power to grant leases cannot be delegated to another agency.”*

The provisions of the Planning and Land Bill provide an authorisation for the Authority to grant leases on behalf of the Executive. The Bill has been framed to ensure that the Land Development Agency can grant a lease only when the Authority gives an appropriate delegation.

Clause 17(2) of the Planning and Land Bill enables the process of selling land to be more effectively fulfilled by enabling it to complete its contractual agreement to grant an estate. This could occur as a normal part of the Land Agency's procedures, once all development and infrastructure requirements in respect of the land have been met.

That procedure avoids unnecessary administrative double handling, whereby leases would be prepared by the Authority and forwarded to the Land Agency for issuing to purchasers of particular parcels of land.

- *"That directions by the Treasurer to the Land Development Agency relating to the payment of funds to the Territory should be notifiable instruments."*

It is not considered appropriate, for directions by the Treasurer for the payment of funds to the Territory to be notifiable instruments. For the purposes of accountability and transparency, any outcomes from Treasurer's directions will be available for public scrutiny through quarterly performance reports, annual budget papers, statements of corporate intent, audit reports, annual reports, and Estimates Committee hearings.

For those reasons, the Government believes that adoption of the recommendation would impose an unnecessary procedural burden.

The Government has responded positively to the majority of Committee's recommendations and conclusions.

- Regarding the proposed date for review of the Act (at clause 75), the Government has noted the Committee's concerns about the timing for review, and proposes to amend the Bill to require review as soon as practicable after 31 December 2006. This is a year earlier than currently provided in the Bill, and provides for a review more than 3 years after the commencement of the legislation.
- The Committee expressed a concern about the primacy of the Territory Plan in respect of the proposed Statement of Planning Intent. The Government proposes to amend the Bill, to include a note making it clear that section 8 of the Land Act - which prohibits acts that are inconsistent with the Plan - cannot be overridden by a Statement of Planning Intent. That would clarify the position that a Statement may present policy intentions that were inconsistent with the Plan, but those could not be acted upon unless and until the Plan was varied to permit that action.
- The experience and qualifications expected of a Chief Planning Executive will be expanded, by amendment to the Bill, to state that the person must have experience and expertise necessary to perform the functions of the position. Those functions are, in fact, the functions of the Planning and Land Authority, as stated in clause 8 of the Bill.
- As to making public advice from the Planning and Land Council to the Minister on the use of call-in powers, it is proposed to amend the Bill to require that advice to be notified.

- Where an Assembly Committee is examining a matter that the Council has advised on, that advice will be made available to the Committee. In saying this, I note that Assembly Committees are, in any case, in a position to seek relevant background information on matters under consideration.
- Regarding the availability of internal guidelines and procedure manuals developed by the Authority or the Land Development Agency, the Government agrees that those should be made available for inspection.
- The Government proposes to include the field of “engineering” as an additional criterion to the areas of expertise relevant to the appointment of members of the Council and the Land Agency Board. This would cover “construction”, as recommended by the Committee.
- The Committee recommended that a review of community participation in the proposed planning structures be undertaken. The Government agrees that this will be part of the new Authority’s responsibilities and will include a review of the role of the newly established Planning and Development Forum.

In all, the Government’s response to the Committee’s Report reflects the high value it places on the consultative and advisory role of the Committee. Of course, the Government will pursue its policy objectives and, unless persuaded to do otherwise, will sometimes disagree with a recommendation that compromises those objectives.



In this case, however, there have been several areas in which the Government can see the benefit of compromise. For that reason, as I have said, the Government is appreciative of the Committee's contribution to this process. I wholeheartedly repeat my earlier thanks to the Committee members and contributors to the inquiry.





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CAPITAL TERRITORY

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE  
REPORT OF THE STANDING COMMITTEE ON  
PLANNING AND ENVIRONMENT  
REPORT NO. 9 - PLANNING AND LAND BILL 2002  
AND ASSOCIATED LEGISLATION**

**November 2002**

Mr Simon Corbell MLA  
Minister for Planning

*19 November 2002*



## **Report No. 9 - Planning and Land Bill 2002 and Associated Legislation**

### **Summary of conclusions & recommendations**

1. The committee recommends to the Assembly that this legislation not be rushed through to meet artificial deadlines. The committee understood that the government originally wished to have its new structure in place on 1 January 2003. It has been advised that 1 July 2003 is a more realistic starting date. Para 1.10
2. There are a significant number of areas of uncertainty with regard to these bills. The committee believes, that on a matter of such fundamental importance to the future of the ACT, a measured approach to consideration of the legislation is vital. Therefore if the later starting date has been adopted by government then more time should be given for the Assembly and the community to consider the detail of the legislation. Para 1.10
3. The committee shares some of the concern that this legislation may add a further layer of complexity to an already complex and sometimes cumbersome process. (see paras 3.2-3.7) There appear to be a number of areas of overlap between existing and new legislation and also a lack of clarity with regard to the interaction of existing and new processes. Even definitions of terms used in the legislation differ from those for the same terms in other territory acts. The committee considers it vital that the minister clarifies these matters before the legislation proceeds. Para 4.1
4. The committee recommends that clause 75 of the Planning and Land Bill 2002 be amended to require the Minister to initiate a review of the operation and effectiveness of the Act no later than 31 December 2005. Para 4.5
5. The committee recommends that the primacy of the Territory Plan should remain and that new legislation should reflect this. Para 4.8
6. The minister should clarify the use to which the statement of planning intent can be put; the frequency with which it might be used and, generally, how it differs from a ministerial direction under clause 11 (1)(a). Para 4.9
7. The committee recommends that sections 11 and 13 of the Planning and Land Bill 2002 be amended to require that a direction of the minister and a statement of planning intent be tabled in the Assembly on the next sitting day after they have been given to the Authority. Para 4.10
8. The committee recommends that the relationship between the Authority and the Assembly be formalised by requiring the Authority to report on its activities to the appropriate Assembly committee at least once every six months. Para 4.14

9. The committee recommends that the government consider establishing a Planning Ministry which would:
  - (a) provide the Planning minister with administrative support and advice; and
  - (b) assume some of the routine administrative functions proposed to be given to the Planning and Land Authority. Para 4.18
10. The committee recommends that the bill make some reference to the general experience and qualifications expected of any appointee; for example, high level urban planning experience in one or more major cities and senior management experience. Para 4.21
11. The committee recommends that clause 17(2) be deleted from the bill and clause 17(1) be amended to make explicit that the power to grant leases cannot be delegated to another agency. Para 4.23
12. The committee therefore recommends that the government provide secure funding to the community sector to facilitate effective participation in the planning process. Para 4.24
13. The committee is concerned with the lack of detail available with regard to the structure and operations of the new bodies, particularly the Authority. It is also concerned that the process of transition to the new system has not been adequately considered. The committee trusts that, if the new system is not to be introduced until 1 July 2003, detail on these matters will be forthcoming. Para 4.29
14. The committee recommends that advice the Planning and Land Council gives to the Authority or the minister should be made public when a decision or determination is made. Para 4.31
15. The committee also recommends that where the appropriate Assembly committee is examining a matter that has been the subject of advice from the Council that advice should be available to the committee. Para 4.32
16. The committee recommends that internal guidelines and procedural manuals developed by the Authority, the Council and the Land Agency be tabled in the Legislative Assembly and be freely available to the public. Para 4.35
17. The committee recommends that the category 'land development' be extended to include 'construction'. Para 4.37
18. The committee supports the proposal of the Planning Institute and therefore recommends that it be made explicit in the legislation that the Land Development Agency is bound by the same general planning principles as the Authority. Para 4.39  
  
To ensure accountability the committee recommends that the Land Development Agency maintain separate accounts for its various activities. For example, the existing Kingston Foreshore Development Authority and the Gunghalin Development Authority's activities should be clearly identifiable. Para 4.41

- 19. The committee recommends that directions by the Treasurer under section 47 of the Planning and Land (Consequential Amendments) Bill should be notifiable instruments. Para 4.44**
- 20. The committee recommends that a review of the place of community participation in this proposed planning structure be undertaken. Para 4.52**
- 21. This report should not be considered an endorsement of this package of legislation. The committee has raised a number of issues that it believes require further debate and discussion before the legislation is finalised. The restrictions in the time available to the committee, which are described in chapter 1, have inhibited its ability to conduct a thorough analysis of the proposals. Para 4.53**
- 22. The committee reaffirms its view that the long term outcome of the government's reform process will be improved if more time is allowed for consideration of this legislation. The committee reserves it right to comment further on any aspect of these bills. Para 4.54**

**1. The committee recommends to the Assembly that this legislation not be rushed through to meet artificial deadlines. The committee understood that the government originally wished to have its new structure in place on 1 January 2003. It has been advised that 1 July 2003 is a more realistic starting date. Para 1.10**

#### Government Response

Agreed. The Government will not be rushing the implementation of the governance structures as provided in the legislation. However to ensure that the start date of 1 July 2003 can be achieved, the necessary legislation should be in place as soon as possible.

The Planning and Land Bill was presented in the Assembly on 27 June 2002, and detailed briefings were provided to Assembly Members, and to community and industry groups. The Consequential Amendments Bill was tabled on 26 September 2002, and again, briefings were offered to all Members, as well to industry and community groups.

Apart from the comments and suggestions contained in the nine submissions received by the Committee, little concern has been expressed about the contents and direction of these Bills. In fact, quite favourable feedback has been presented about the overall governance framework proposed.

The transition to the new structures and the implementation of the policy requires sufficient lead time to ensure that the implementation is undertaken in an orderly and considered manner.

The Government intends to bring debate on in the Assembly in the November and December sitting weeks.

**2. There are a significant number of areas of uncertainty with regard to these bills. The committee believes, that on a matter of such fundamental importance to the future of the ACT, a measured approach to consideration of the legislation is vital. Therefore if the later starting date has been adopted by government then more time should be given for the Assembly and the community to consider the detail of the legislation. Para 1.10**

#### Government Response

Agreed in part. The Assembly debate is the time for the further consideration of any 'areas of uncertainty'. The Committee report has not identified specific areas of uncertainty in the legislation. The proposed legislation was carefully prepared after much research and has been considered at length. It is based on the pre-election policy which detailed the structures and policy position in relation to the new Authority and Land Development Agency.

The Bills are major pieces of legislation which are an explicit implementation of a key election commitment of the government. The election itself was the opportunity for the Canberra community to vote on a key piece of policy for the election - the establishment of an independent planning authority and a



resumption of a level of government land development activity - and the community endorsed the Government's policy.

Any further delays in the consideration of the Bills by the Assembly are not considered beneficial and will reduce the time available to concentrate on the implementation of the organisational and structural changes necessary to commence in July 2003.

The proposed implementation date of 1 July 2003 is an appropriate commencement date, as it will be 12 months since the main Bill was presented in the Assembly and is the start of a new financial year.

**3. The committee shares some of the concern that this legislation may add a further layer of complexity to an already complex and sometimes cumbersome process. (see paras 3.2-3.7) There appear to be a number of areas of overlap between existing and new legislation and also a lack of clarity with regard to the interaction of existing and new processes. Even definitions of terms used in the legislation differ from those for the same terms in other territory acts. The committee considers it vital that the minister clarifies these matters before the legislation proceeds.**

#### **Para 4.1**

#### Government Response

Noted. The proposed governance structures, which establish the new Planning and Land Authority, an expert Planning and Land Council and a Land Development Agency, aim to simplify the arrangements for planning and development.

In terms of the governance framework, the Planning and Land Authority is established outside the current Department of Urban Service administrative structure. The head of the Authority, the Chief Planning Executive, will be responsible directly to the Minister for Planning. The CPE, who will be the authority in terms of the powers and functions under the Planning and Land Bill, will also be required to seek advice from the Planning and Land Council (on matters specified under the Planning and Land Regulations).

#### *Commissioner for Land and Planning*

The Planning and Land (Consequential Amendments) Bill provides for the removal of the function of the Commissioner for Land and Planning (COMLAP) (Clause 1.125, Division 6.5). This results in the reduction of the number of decision-makers that could potentially be involved in the decision making process. Under the Land Act there are currently four decision-makers:

- the planning authority (PALM);
- the Minister (when exercising call-in powers);
- COMLAP (assessment and determination of non-single dwelling development applications which have attracted objections - approximately 200 decisions per annum); and

- the Administrative Appeals Tribunal.

As part of the development application assessment process, applicants are encouraged to discuss their proposals with, and are guided by, PALM officers, but when an objection is lodged there is a change in the decision-maker - from PALM to COMLAP. As a result, proponents do not have the same 'case manager' throughout an application process.

Notwithstanding that the majority (90%) of PALM recommendations are supported by COMLAP, the 10% that are not often result in confusion and uncertainty for both PALM and proponent. There is no requirement for the Commissioner to communicate an alternative view to PALM, and receive a response prior to making an alternative decision. This has not always resulted in optimal planning outcomes, and has not provided good customer service to applicants.

In reviewing the current arrangements, there was concern expressed that the existence of the separate COMLAP function resulted in an overly convoluted and confusing development assessment process.

#### *Reconsideration of Development Decisions*

Another positive change as part of the package of reforms is the provision for the reconsideration of development decisions. Under the current legislation the decision-maker has little scope to resolve the concerns of either objectors or applicants after a decision has been made, unless it is possible to make a minor amendment to an approval. That has forced a resolution of many matters in the AAT rather than through an agreed process prior to having to resort to appeal in the AAT.

To address that situation, the Consequential Amendments Bill adds sections 246 to 246C into the Land Act - to allow the Authority, on application by the proponent, to reconsider a decision on a development application. Any objectors are to be given an opportunity to comment on a proposed reconsideration, and those comments must be taken into account.

This change aims to enhance customer service and avoid unnecessary appeals. It is also consistent with recent changes in NSW where the reconsideration of development decisions has helped streamline development decision processes.

#### *Role of Planning and Land Council*

In terms of development applications being referred to the Planning and Land Council for expert advice, it is not envisaged that this will add to the time taken to determine these significant applications. The referral is likely to occur as part the process of assessment by the Authority, and the Council will have the flexibility to consider and provide comment on applications outside the formal meeting timeframes. The Council's statutory role will be to provide expert advice on matters referred to it by the Authority or the Minister, and the Authority and/or Minister are required to take the Council's advice into account.

The Government has endeavoured to respond to concerns identified by the Committee in its report, and to clarify matters of concern.

**4. The committee recommends that clause 75 of the Planning and Land Bill 2002 be amended to require the Minister to initiate a review of the operation and effectiveness of the Act no later then [sic] 31 December 2005. Para 4.5**

Government Response

Agreed in part. The Government notes the Committee's concerns about the length of time before the Act is to be reviewed. However to schedule a substantive review after only two and a half years after the Act comes into effect is considered too early to undertake a full assessment of the operation and effectiveness of the Act.

The Government is agreeable to amend the Bill to require a review as soon as practicable after 31 December 2006, that is, three and a half years after its commencement. This timing will ensure that there has been sufficient time to assess the operation of the Act, in terms of the new Authority, the Planning and Land Council, and the commercial operations of the Land Development Agency.

**5. The committee recommends that the primacy of the Territory Plan should remain and that new legislation should reflect this. Para 4.8**

Government Response

Agreed. The Territory Plan is a statutory instrument under the Land Act which must be complied with at all times. As noted by the Committee, the Minister's powers are still limited by Section 8 of the Land Act, and that the Minister may not act inconsistently with the Territory Plan.

The proposed statement of planning intent, as provided in the Planning and Land Bill, cannot over-ride the Territory Plan, nor can the Minister direct the Authority to do anything that over-rides the Territory Plan. It is the responsibility of the Assembly to approve changes to the Territory Plan and the Land Act confirms this power.

**6. The minister should clarify the use to which the statement of planning intent can be put; the frequency with which it might be used and, generally, how it differs from a ministerial direction under clause 11 (1)(a). Para 4.9**

Government Response

Agreed. As noted above, the provision in the Bill for a statement of planning intent enables the Minister to give the Authority a written statement that sets out the main principles that are to govern planning and land development in the ACT.

The statement of planning intent cannot over-ride the Territory Plan, nor can the Minister direct the Authority to do anything that over-rides the Territory Plan. It is the responsibility of the Assembly to approve changes to the Territory Plan and the Land Act confirms this power

To clarify the use to which the statement of planning intent can be put, the frequency of issuing the statement has not been stipulated in the Bill as it provides the opportunity for the Government of the day, or the Minister to prepare a statement of the planning vision for the Government at any time. This could be similar to the Government's pre-election policy platform. A copy of the statement is to be presented in the Legislative Assembly within 6 sitting days after it has been given to the Authority.

The Planning and Land Bill provides for the Minister to give a written direction to the Authority 'about general principles the authority must follow', whereas the statement of planning intent enables the Minister to give a written statement that sets out the main principles that are to govern planning and land development.

The Bill has been drafted to provide options in terms of a specific direction, which would have greater immediacy, and a broader statement of the vision, for, say, the term of the government or for a financial year.

**7. The committee recommends that sections 11 and 13 of the Planning and Land Bill 2002 be amended to require that a direction of the minister and a statement of planning intent be tabled in the Assembly on the next sitting day after they have been given to the Authority. Para 4.10**

#### Government Response

Not agreed. The provisions in the Bill reflect the standard tabling timeframes, and the Committee does not present any reasons that these should be changed. It is considered that the Committee's recommendation would not be practical in terms of tabling a direction, or the statement of planning intent, on the next sitting day after being given, in the Authority.

**8. The committee recommends that the relationship between the Authority and the Assembly be formalised by requiring the Authority to report on its activities to the appropriate Assembly committee at least once every six months. Para 4.14**

#### Government Response

Not agreed. The Planning and Land Authority will be subject to the provisions of the Financial Management Act, the Annual Reports Act and other standard reporting requirements of the Government.

**9. The committee recommends that the government consider establishing a Planning Ministry which would:**

- (a) provide the Planning minister with administrative support and advice; and**
- (b) assume some of the routine administrative functions proposed to be given to the Planning and Land Authority. Para 4.18**

Government Response

Noted. The proposal for a Planning Ministry does not relate directly to the provisions of the Planning and Land Bill, but is considered to be that of an administrative structure which the Government of the day can put in place.

The Government considers that the processes and protocols that will be put in place when the entities are established will ensure that the Minister receives advice that has been fully and appropriately considered.

The Planning and Land Bill clearly specifies the functions of the three organisations in relation to their policy roles:

- The functions of the Planning and Land Authority, through the Chief Planning Executive, include “to advise on planning and land policy...” Section 8 (1) (d).
- The Planning and Land Council must give advice on matters ... if asked by the Minister or the Authority - section 26 (1).
- The Land Development Agency must exercise its functions in accordance with the urban management objectives set out in the Territory plan - Section 37 (4) (a).

The functions as represented in the Planning and Land Bill confirm the independence of the three entities. The Bill has been deliberately drafted to provide independent and expert advice from the three sources where such advice is sought. The process would involve the Minister considering the advice only after the proposed consultative mechanisms have been followed and the advice presented to the Minister.

The Minister also has the option of seek advice from other sources, such as the central ACT Government agencies or the Department of Urban Services.

The routine administrative functions proposed to be given to the Planning and Land Authority will be the responsibility of the Authority, and the establishment of an additional bureaucratic layer is not warranted.

**10. The committee recommends that the bill make some reference to the general experience and qualifications expected of any appointee; for example, high level urban planning experience in one or more major cities and senior management experience. Para 4.21**

Government Response

Agreed. The Government will move an amendment to the Planning and Land Bill to make it clear that the person appointed to the position of Chief Planning Executive has the experience and expertise to exercise the functions of the position. The functions of the position are those of the Authority as defined in Section 8 of the Planning and Land Bill.

The recommendation that the appointee have 'high level urban planning experience in one or more major cities and senior management experience' is not supported as such an approach could narrow the field of potential candidates when the position is advertised.

**11. The committee recommends that clause 17(2) be deleted from the bill and clause 17(1) be amended to make explicit that the power to grant leases cannot be delegated to another agency. Para 4.23**

Government Response

Not agreed. The governance structures that are reflected in the Planning and Land Bill aim to ensure clarity of roles between the respective organisations – in terms of planning policy and regulation, and the commercial activities of developing and selling land.

The current ACT Land Act reflects the provisions of the Commonwealth's *Australian Capital Territory (Planning and Land Management) Act 1988* by providing for the ACT Executive, on behalf of the Commonwealth, to grant leases of Territory land in certain ways, and subject to certain constraints. The provisions of the Planning and Land Bill provide an authorisation for the Authority to grant leases on behalf of the Executive. The Bill has been framed to ensure that the Land Development Agency can grant a lease after the appropriate authorisation is given by the Authority

Section 17 (2) of the Planning and Land Bill currently provides for the Authority to "delegate the function of granting leases on behalf of the Executive to the land agency". This provision enables the process of selling land to be more effectively fulfilled as part of the Land Agency's procedures, once all development and infrastructure requirements in respect of the land have been met. There is no conflict of interest as the delegation will not be able to be exercised until the Land Development Agency has complied with all the requirements of the Planning and Land Authority and other appropriate agencies.

The delegation of the power to the Land Development Agency also avoids unnecessary administrative double handling, whereby leases are prepared by

the Authority and forwarded to the Land Agency for issuing to purchasers of particular parcels of land.

Protocols developed between the Authority and the Land Agency will detail the mechanisms to ensure propriety and efficiency in relation to the granting of leases powers.

**12. The committee therefore recommends that the government provide secure funding to the community sector to facilitate effective participation in the planning process. Para 4.24**

Government Response

Noted. There are a number of forums established to ensure stakeholder participation in the planning processes in the ACT, and these are supported in a number of ways. These provide for a range of different interests to be represented at different levels – whether at the local neighbourhood level or at a broader strategic level. Any decisions about funding are for the Government to consider in the Budget context against a range of competing requirements.

The Government has recently moved to formalise the role of community groups and industry in providing input to the development of planning policy by establishing a Planning and Development Forum. The Forum is an industry and community-based body which takes a strategic overview and promotes input to the management of the ACT Government's planning and development policy agenda. Members of the Forum will work cooperatively to enable a timely and integrated approach to the policy agenda.

The Forum, chaired by an independent person, advises the Minister for Planning and PALM on:

- Current planning policies and initiatives, including:
  - Canberra Spatial Plan
  - Neighbourhood Planning
  - Open Space Review
  - ACT Code
  - Draft Territory Plan Variation 200 [the Garden City Variation]
  - Master Planning for town, group and local centres
  - Community Facility Needs Assessment.
- The development of new planning policies and initiatives, as required by the Minister.
- Communication of those policies and initiatives to the community and constituency of Forum members.
- Policy evaluation, including responses to community and industry consultation processes.

The twelve members have been drawn from:

3 industry groups - MBA, HIA, and Property Council

- 3 professional groups – RAIA, PIA and Landscape Architects/Designers/  
National Trust
- 1 Conservation Council
- 1 ACTCOSS
- 4 community members - LAPACS/NPGs, PACTT and community councils

The Forum will consider planning issues until such time as the Planning and Land Authority is established. The Planning and Land Authority will then consider the range of consultative mechanisms that it will require – including the continued role of the current Planning and Development Forum.

**13. The committee is concerned with the lack of detail available with regard to the structure and operations of the new bodies, particularly the Authority. It is also concerned that the process of transition to the new system has not been adequately considered. The committee trusts that, if the new system is not to be introduced until 1 July 2003, detail on these matters will be forthcoming. Para 4.29**

#### Government Response

Details about the structure and operations of the new bodies, particularly the Authority, will be developed as part of the implementation and transition phase.

The process for implementation of the new structures and operations of the new entities requires certainty about the framework. This can be achieved by the Assembly considering the legislative framework at the earliest opportunity.

The Committee can be assured that the details on these matters will be forthcoming to enable a commencement date of 1 July 2003.

**14. The committee recommends that advice the Planning and Land Council gives to the Authority or the minister should be made public when a decision or determination is made. Para 4.31**

#### Government Response

Agreed. In relation to the exercise of the Ministerial call-in powers, the advice received from the Council is to be notified as part of the Minister's responsibilities under the Land Act. This ensures enhanced transparency and accountability in this process.



**15. The committee also recommends that where the appropriate Assembly committee is examining a matter that has been the subject of advice from the Council that advice should be available to the committee. Para 4.32**

Government Response

Agreed. Where a matter has been referred to a Committee by Government, and that matter has been the subject of advice from the Council, then the Council's advice will be made available to the Committee.

It should be noted that the Assembly Committees are in a position currently to seek any relevant and background information on consideration of a matter.

**16. The committee recommends that internal guidelines and procedural manuals developed by the Authority, the Council and the Land Agency be tabled in the Legislative Assembly and be freely available to the public. Para 4.35**

Government Response

Agreed in part. Internal guidelines and procedural manuals developed by the Authority, the Council and the Land Agency will be made available.

**17. The committee recommends that the category 'land development' be extended to include 'construction'. Para 4.37**

Government Response

Agreed. The 'land development' area of expertise was included in the Planning and Land Bill on the basis that it assumed an element of 'construction' expertise. The Government has agreed to include 'engineering' as an additional criterion, and this includes 'construction' as an area of required expertise and experience.

**18. The committee supports the proposal of the Planning Institute and therefore recommends that it be made explicit in the legislation that the Land Development Agency is bound by the same general planning principles as the Authority. Para 4.39**

To ensure accountability the committee recommends that the Land Development Agency maintain separate accounts for its various activities. For example, the existing Kingston Foreshore Development Authority and the Gunghalin Development Authority's activities should be clearly identifiable. Para 4.41

### Government Response

Agreed. The Land Development Agency is to be bound by the same general planning principles as the Authority. The functions of the Authority include 'to advise on planning and land policy' [Section 8 (1) (d)] and the planning principles underpinning the Authority will apply equally to the Land Agency. The Bill also provides that the Land Agency is to exercise its functions in accordance with the urban management objectives set out in the Territory plan' [Section 38 (4) (a)]. This ensures that there are no inconsistencies with the general planning principles in relation to the Land Agency.

In relation to the accounts of the Land Agency, the operations of the Kingston Foreshore Development Authority and the Gungahlin Development Authority will be separately identified where they continue to exist as separate entities.

### **19. The committee recommends that directions by the Treasurer under section 47 of the Planning and Land (Consequential Amendments) Bill should be notifiable instruments. Para 4.44**

#### Government Response

Not agreed. It is not considered appropriate that directions by the Treasurer for the payment of funds to the Territory to be notifiable instruments. The legislation in relation to the Kingston Foreshore Development Authority and the Gungahlin Development Authority does not require that similar directions by the Treasurer to be notified.

The Bill provides that the Treasurer, in giving a direction in relation to the payment of funds to the Territory, must have regard to the Land Agency's assets and liabilities, income and expenditure, ability to exercise its functions and the requirement that the Territory obtain a reasonable return from the development and disposal of land.

For purposes of accountability and transparency, any outcomes from Treasurer's directions issued under section 47 of the Planning and Land Bill will be available for public scrutiny through annual budget papers, statements of intent, audit reports, annual reports, and Estimates Committee hearings.

### **20. The committee recommends that a review of the place of community participation in this proposed planning structure be undertaken. Para 4.52**

#### Government Response

Agreed. It is expected that the new Planning and Land Authority will undertake a review of the place of community participation. This will include the evaluation of the Planning and Development Forum, and other mechanisms currently in place.

**21. This report should not be considered an endorsement of this package of legislation. The committee has raised a number of issues that it believes require further debate and discussion before the legislation is finalised. The restrictions in the time available to the committee, which are described in chapter 1, have inhibited its ability to conduct a thorough analysis of the proposals. Para 4.53**

Government Response

The Committee's comments are noted.

**22. The committee reaffirms its view that the long term outcome of the government's reform process will be improved if more time is allowed for consideration of this legislation. The committee reserves it right to comment further on any aspect of these bills. Para 4.54**

Government Response

The Committee's comments are noted.

