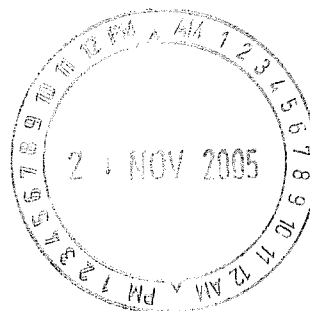




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18 November 2005

Mr Richard Mulcahy, MLA
Chairman,
Standing Committee on Public Accounts
GPO Box 1020
CANBERRA ACT 2601



Dear Mr Mulcahy,

I have serious concerns with the present and the proposed ACT development assessment process. Some of these concerns are outlined in an enclosed brief submission to your Committee.

When your Committee originally advertised for submissions in July 2005 I was away from Canberra and did not become aware of the relevant terms of reference until a recent newspaper report mentioned the work of the Committee. Your Committee Secretary suggested I should still make a submission to your Committee.

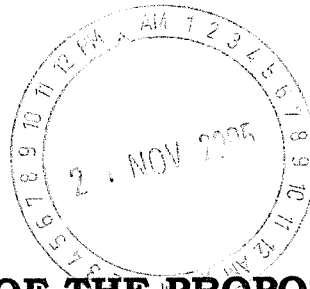
I would be grateful if you and your Committee would give consideration to the matters I have raised. I would be happy to elaborate on my views before your Committee.

Yours sincerely,

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
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SUBMISSION ON THE EFFECTS OF THE PROPOSED REFORMS OF THE ACT PLANNING SYSTEM ON THE DEVELOPMENT ASSESSMENT PROCESS

1. I have had a long-term interest in planning issues in the A.C.T. which has been heightened in recent years by my involvement with the South Bruce Residents Association of which I am Vice-President.
2. Like many Canberra residents to whom I have spoken I have serious concerns with several aspects of the proposed reforms as outlined in the ACTPLA Reform Project Directions Paper. An equitable development assessment system is important to all residents of Canberra yet very few would be aware of how the new planning system will affect them because some of the more devastating proposals are well disguised in the Directions Paper. The proposals purport to adopt "best practice" in other jurisdictions when in fact they are following the lowest common denominator in some other States where such changes have caused widespread dissatisfaction. In the coming years when Canberra residents experience the effects of the proposed changes there could well be a backlash against our politicians who condoned the new system. This is what happened in Victoria when the seemingly impregnable Kennett Government including its Minister for Planning suffered an election defeat in 1999. This was mainly attributed to the anguish felt in the suburbs regarding poor planning policies involving unfettered developments and higher densities in leafy suburbs.¹
3. In general terms the proposals will seriously tilt the development approval process, even further than now, in favour of both multi and single building developers against the ordinary citizens of Canberra who are affected by these decisions. The new proposals seem to have an unspoken agenda to stifle objectors who are trying to maintain Canberra's cherished lifestyle against unbridled development. This is evidenced by the proposal to abolish the public notification process and third party consultation for dual occupancy and two storey houses. This is despite the current Government's promise at a previous election to restrict the dual occupancies to certain areas.
4. Canberra citizens do not want unbridled growth as is sometimes espoused by developers and some in government who see it as an easy source of revenue. One of the reasons that Canberra became a beautiful city was the careful controls on developments including in the suburbs. Some of my major concerns are outlined below.

¹ See Miles Lewis' book *"Suburban Backlash"* (1999) which includes a critique of Victoria's planning provisions and how they caused dissatisfaction with Mr Kennett's Government.

Proposed Removal of Departmental Development Approval for Single Residences including Removal of Consultation with Neighbours

5. If a leaseholder puts a second storey on their house it frequently can have a devastating effect on a neighbour by taking sunlight and privacy away. Under the new system such neighbours will not know what is happening because they will not be consulted. This will result in unease and ill feeling between neighbours when those affected lose their amenity.

6. What checks will there be on the private building certifiers and registered planning certifiers who undertake a flawed code assessment? The need for a continued approval and consultation process is best illustrated by an appalling experience my wife and I had in 1998:

- a. A new owner had bought the house next door situated on our northerly aspect and without consultation with us put in a development application. We subsequently had ten working days to comment to Planning and Land Management (PALM) on a proposed two-storey development which would seriously overshadow our private indoor and outdoor living areas. Luckily we were not away at the time, enabling us and several other neighbouring households to submit objections.
- b. PALM recommended approval of the development proposal despite the fact that the application did not meet some critical performance measures and objectives in the Design and Siting Code. Furthermore there were the following unfair aspects that favoured the developer:
 - (1) My neighbour had engaged an officer in PALM (the then approving authority) to draw up the plans. There was clearly a conflict of interest situation. I will not elaborate on this aspect in this submission except to say that I have full documentation of this case including a letter of apology from the then Chief Executive Officer of the Department of Urban Services regarding the way the matter was handled.
 - (2) PALM based its approval on its shadow diagrams which ignored substantial height differences between the two properties. This was despite the fact that my written objections and attached shadow diagrams prepared by a firm of architects had highlighted the fact that the development stood on higher ground than ours.
 - (3) Despite my repeated requests for an on site inspection, the two officers who eventually arrived at our home advised us that the proposal would be approved and only then did they proceed to actually make a site inspection of the relevant properties.
 - (4) Had it not been by sheer luck that we found out about the procedural irregularities and lack of probity in the initial approval process our home would now be overshadowed, its value lowered and we would have had a great loss of amenity. We had no right of appeal to the AAT.

- c. Fortunately the then Minister responsible for planning was made aware of this case and an independent review was undertaken. The Commissioner for Land and Planning in due course reviewed the resubmitted two-storey development application and decided against its approval based on the criteria in the Design and Siting Code.

Denial of Appeal Rights to affected Neighbours

7. Residents need the security of knowing that they will be consulted and their opinions and rights given the same consideration as those of developers. They also need assurance that the original development conditions which attracted them to their suburb will be maintained.

8. The decision by the Government in 1997 to abolish appeals to the Administrative Appeals Tribunal by objectors to a single dwelling development already favoured developers under the present regulations. I refer to Schedule 7 to the Land (Planning and Environment) Regulations of 1997 (Regulation 24 Item 5). This was a severe diminution of the rights of objectors, yet developers can still appeal if their application is rejected. This disparity in appeal rights is not equitable. Under the new system the situation of neighbours affected by developments will be even more precarious and it will not ensure the highest standards of probity in the approval process.

9. The controls on the unfettered development of residential blocks are necessary to keep Canberra the beautiful city it is today. The proposals for change could turn neighbour against neighbour, the reduced controls relying on private certifiers who will not be independent "adjudicators" if paid by the developer (see also below). Furthermore the lower standards that will result from not requiring approvals for extensions, large sheds and carports will lead to the gradual degradation of the suburbs.

10. The present regulations need to be made more equitable and be strengthened. Objectors should be allowed the same appeal rights as residential developers. As currently in the case of a single two storey dwelling only the developer can appeal to the Administrative Appeals Tribunal (AAT) there can be a natural inclination in the approval process to favour the party that has appeal rights. All this is intended to change for the even worse with no consultation at all.

Erection of Signs

11. The previous system of a proposed development in all cases requiring the erection of a street sign showing intentions to extend a house etc should be enforced. This alerts neighbours and also enables other householders living in the street to comment on the effects on the streetscape etc. At the very least, if the name of the private building certifier or registered planning certifier is listed on a sign comments can be made to them. This would be a second-best method to an "independent" departmental official being involved.

Disadvantages of Private Certifiers

12. The use of private building certifiers or registered planning certifiers in the proposed "Code" Development Assessment track for dual occupancy and double storey applications, is particularly disturbing. In other words the only design and building check on the developer of a property will be a private certifier paid by that

developer. This can lead to a conflict of interest and detrimental effects on those in surrounding houses, and in some instances could lead to shoddy workmanship. I know of an instance where a private certifier did not ensure that there were stormwater downpipes for a house because the owner didn't want them. The net result was substantial flooding for a neighbour living on the lower side whenever there was reasonable rain. With the over-reliance on private certifiers the Government is abrogating its responsibilities to enforce standards and the rights of third parties. One way of having neighbour consultation, albeit a second best way, would be a requirement for the private certifier to contact neighbours in regard to development proposals if the Government is no longer going to do this.

Taking Account of Original Development Conditions

13. Leaving single development applications ("Code" track) to private certifiers makes it almost certain that such developments do not take in to account the original development conditions for the suburb. In the case of South Bruce these were originally carefully enforced to ensure the suburb blended well with its natural surroundings.

Contradiction of Solar Efficiency Policy

14. Canberra citizens have been encouraged by political parties to have solar efficient houses as well as having solar panels on their roofs. The new lax enforcement of building codes will not offer protection for neighbours losing sunlight as a result of two storey developments. Indeed one can install expensive solar panels only to have a neighbour later make them largely ineffective by building a two storey house across a northerly aspect.

Conclusion

15. The proposed development approval system with no consultation process for single developments, already favouring residential developers at the expense of neighbours, should not become meaningless. It will become meaningless, and damaging to our beautiful city, without a consultation process involving interested residents and with a total reliance on private certifiers paid by the developer.

16. This submission points out a number of serious flaws in the proposed new planning system and the assessment process for residential developments.

Alex Ducken