

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

THE STEIN REPORT (Report into the Administration of the A.C.T. Leasehold) *AND THE
GOVERNMENT'S RESPONSE TO THE REPORT*

**REPORT NO.13
OF THE
STANDING COMMITTEE ON PLANNING AND ENVIRONMENT
JUNE 1996**

Resolution of appointment of the Standing Committee on Planning and Environment:

[that] a Standing Committee on Planning and Environment [be established] to examine matters related to planning, land management, transport, commercial development, industrial and residential development, infrastructure and capital works, science and technology, the environment, conservation, heritage, energy and resources...
[And that the committee] inquire into and report on matters referred to [it] by the Assembly or matters that are considered by the committee to be of concern to the community.

Minutes of Proceedings (Third Assembly) No.1 - 9 March 1995, amended 22 June 1995

Terms of reference for the inquiry that is the subject of this report:

That the:

- (1) Government take no action to implement its response to the “Stein Report” until the Standing Committee on Planning and Environment has reported on the “Stein Report” and the Government response to it; and
- (2) the Stein Report and the Government’s response be referred to the Standing Committee on Planning and Environment for report by 30 June 1996.

Minutes of Proceedings (Third Assembly) - 28 March 1996

Committee Membership

Mr Michael Moore MLA (Chair)
Mr Trevor Kaine MLA (Deputy Chair)
Ms Lucy Horodny MLA
Ms Roberta McRae OAM, MLA

Secretary: Mr Rod Power
Assistance: Ms Anne Munns

Introduction

1. On 2 June 1995 the Standing Committee on Planning and Environment, following an examination of a redevelopment proposal for the former Starlight Drive-In site at Watson and a draft Variation to the Territory Plan for Yowani Golf Club at Lyneham, resolved as follows:

That the Government institute an inquiry under the Inquiries Act into the administration of A.C.T. leasehold with particular reference to the assessment and collection of the appropriate charges arising from betterment.

2. The Government accepted the committee's recommendation. On 3 July 1995 the Chief Minister announced the establishment of a Board of Inquiry into A.C.T. leasehold, consisting of the Hon. Justice Stein (a Judge of the NSW Land and Environment Court), Chair, and Professor Troy (Head, Urban Research Program, ANU) and Mr Yeomans (chartered accountant). The Board's terms of reference were to:

1. Examine and report on the administration of the ACT leasehold system since self-government with particular reference to the determination of betterment, and including:

- (a) adherence to the applicable statutory framework;
- (b) generation of financial returns to the Government and the community;
- (c) cost of the process of lease variation and determination of betterment;
- (d) adequacy of the relevant organisational arrangements, including the time taken to process applications and approvals;
- (e) the extent to which the original purpose of the leasehold system is relevant;
- (f) the transparency of relevant processes and public confidence in them; and
- (g) any other related matters concerning the administration of the ACT leasehold system as may appear to require examination.

2. In light of the Inquiry's findings about 1 above, make recommendations for any desirable reforms.

3. Consider and make recommendations on (i) the circumstances in which betterment should be charged and (ii) the appropriate levels of betterment, taking into account:

- (a) the likely impacts on economic activity generally, and in particular the growth and level of investment when compared to alternative land tenure systems;

- (b) the likely impact of the good planning of the ACT;
- (c) the term and renewal conditions of commercial and residential leases;
- (d) other ways by which an appropriate return can be made, directly or indirectly to the community from increases in the value of land; and
- (e) any other related matter.

3. The Board presented its report on 15 November 1995. The report contained 96 recommendations.

4. On 28 May 1996 the Government presented its formal response to the Board's report. On the same day the Legislative Assembly referred the Board's Report, and the Government's response, to the Standing Committee on Planning and Environment, stipulating that the committee report to the Assembly by 30 June 1996.

5. The committee determined that it would not re-canvass all of the material raised in the course of the Stein Inquiry. Rather, a full public inquiry having already been carried out, the committee determined to take no further evidence, and to simply review the Board's report and the Government's response to it. This approach recognises that the four members of the Standing Committee on Planning and Environment represent a broad variety of views about Canberra's leasehold system, and that the committee would merely be repeating the work of the Board in seeking public input.

6. In addition, the committee carefully considered the information provided by the Minister for the Environment, Land and Planning (Mr Gary Humphries MLA) in his public briefing on the Government's response to the Stein Report. The Minister, and several senior officials, appeared before the committee on 26 April 1996. The committee thanks the Minister for his cooperation.

7. The committee asked the Minister for further information in relation to certain issues raised by the Stein Report and the Government's response. This information was provided on 5 June 1996 and deals with:

- the costs of establishing separate statutory authorities to handle planning and land management;
- the link between Territory and Commonwealth planning matters;

- the further information to be available once accrual accounting is implemented across Government agencies (- the committee particularly notes the Minister's statement that: 'Once accrual accounting is fully in place, the feasibility of a Land Management Account will be properly considered');
- procedures to follow up complaints about land uses
- policies to generate employment and business opportunities in the Town Centres;
- the functions of a Territory Planning Authority; and
- the issues of appeals and standing.

8. Of the 96 recommendations, there has been broad acceptance of most by the Government and the committee. This report, however, identifies some fundamental areas of difference of opinion - particularly on the issue of the need for a Statutory Planning Authority and a separate Land Authority. The committee recognises that final decisions on these matters are rightly the prerogative of the Assembly as a whole.

9. Also, the committee acknowledges that many issues referred to in the Stein Report, and in the Government's response, will inevitably come back to the Assembly for debate and decision, especially with respect to legislative changes.

10. In light of these points, the committee has tried to give an indication of members' views, at this stage, about the broad issues involved - before the detail of the Government's proposed legislation is known.

11. The committee's comment on particular recommendations of the Stein Report follows. It will be seen that most recommendations of the Stein Report are not commented upon by the committee - indicating that the committee either is satisfied with the Government's proposed action or recognises that the matter can be refined at a later stage of deliberations such as when the Government introduces specific legislation into the Assembly.

12. In presenting the results of its deliberations, the Planning and Environment Committee has reproduced the format of the Government's response on the even-numbered pages of the report. The Government's response was in four columns headed 'Recommendation [of the Stein Report]', 'Response' [of the A.C.T. Government], 'Explanation' [provided by the Government], and 'Implementation' (outlining the way in which the Government intends to implement the changes).

13. On the odd-numbered pages of this report, the committee adds its own comment. To further improve the clarity of the report, the committee's view is shown *in italics*.

14. The committee hopes that its report on the Government's response to the Stein Report will facilitate the development of improved legislation and administrative procedures applying to planning and land issues in the Territory.

The Committee's View on Recommendation No. 4

The committee considers it is important to clearly state the guiding principles of the Land Act and the objectives of the leasehold system. While concerned about the Government's response, the committee notes that the public, and MLAs, will have further opportunity to comment when the Government releases its Draft Policy Objectives for discussion. Members of the Assembly will also have the opportunity to deal with this issue when amendments to the Land Act are brought before the Assembly in the next sittings.

The Committee's View on Recommendations No. 6 and No. 7

The committee notes the Government's inconsistency in relation to statutory authorities in the A.C.T. The Chief Minister has just introduced legislation to introduce a Health Authority and the Deputy Chief Minister a bill to establish a Gungahlin Development Authority.

The committee is concerned that insufficient information has been provided as to why the Government chose not to follow the recommendations of the Stein Report. However, the committee split 2:2 on whether to establish a statutory Territory Planning Authority and Land Management Authority¹.

The committee notes the Government's alternative to the statutory Authorities, which is that the Government appoint a strong, statutory independent decision-maker to be the arbiter of determinations about planning, development and lease variation applications. The committee considers that the statutory office-holder must report annually to the Legislative Assembly on all land transactions and on the management of leasing in the Territory. Further, the Commissioner's Annual Report should provide detailed information, lacking up to now, about revenue from land transactions, including betterment charged [Change of Use Charge as per (10) below] and revenue foregone where the charge has been at less than 100%. In addition, the committee suggests that the reports be presented in a form as near as practicable to that set out in Table 16.1 in the 'Report into the Administration of the A.C.T. Leasehold'.

The committee does agree that the new structures proposed by Government must be reviewed and evaluated and the committee recommends that a Progress Report be tabled in the Assembly in August 1997.

¹ Mr Moore and Ms Horodny for; Mr Kaine and Ms McRae against

The Committee's View on Recommendation No. 7

As for Recommendation No. 6

The Committee's View on Recommendation No. 8.

As for Recommendations No. 6 and No. 7

The Committee's View on Recommendation No. 10.

Rather than replacing the term 'betterment' with a 'Use Rights Charge', the committee recommends that the Government adopt the term 'Change of Use Charge'. The committee considers this terminology more accurately reflects the circumstances in which payment is due to the Territory for a change in lease arrangements.

The Committee's View on Recommendation No. 11

The Committee believes that further work is necessary to fully deal with the issue of 'betterment' and renewal of commercial leases.

The Committee believes it would be of benefit to the people of the A.C.T. if the work identified in paragraph 15.15 of the Stein Report was undertaken so that the community could have a fully informed debate on the issue. Therefore, the Committee recommends that the work identified in paragraph 15.15 be undertaken by the Government in time for the September sittings of the Assembly.

The Committee's View on Recommendation No. 13

As for Recommendation No. 15

The Committee's View on Recommendation No. 15

The committee notes the Government's claim that transparency and certainty will be promoted through the Change of Use Charge [previously betterment] and the new valuation process. The committee agrees with the Government's response provided that the Government-commissioned valuation (which would usually be the Australian Valuation Office [AVO]) can be altered only by the appeals body (the AAT).

The Committee's View on Recommendation No. 20

The committee strongly supports improved land accounting, reporting and monitoring (see Recommendation No. 6) - and expects that the introduction of accrual accounting will assist in facilitating such improvements.

The Committee's View on Recommendation No. 22

As for Recommendation No. 4

The Committee's View on Recommendation No. 43

On the issue of the renewal of commercial leases the Committee notes the failure of the Government to provide a rationale for its policy, particularly considering that it was one of the few areas in the 'Report into the Administration of the ACT Leasehold' which was the subject of a dissenting view.

Therefore, the Committee recommends that the Government prepare a statement on renewal of commercial leases which considers the arguments as set out in paragraphs 17.245 to 17.251 of the Stein Report and the contra arguments put in paragraphs 17.252 to 17.257 in order to reconsider its position on the 10% renewal fee based on the Unimproved Capital Value [UCV] of the lease.

The committee recommends that this analysis be undertaken in time for the debate on the planning legislation in the September sittings. This also would enable the conclusions to be debated in conjunction with the report on the A.C.T. Strategic Plan.

The Committee's View on Recommendation No. 55

The committee considers that, wherever possible, information on planning and land management issues should be readily available. Therefore, the committee encourages the Government to accept and publish copies of plans, drawings and other supporting documentation in electronic form - along with as much other information as possible - in order to facilitate access to the information by the public. The committee considers that many people in the Canberra community may find electronic access to be the cheapest and most accessible means of finding out information.

The Committee's View on Recommendation No. 86

The committee considers that the valuation assessment, whether undertaken by the AVO or another valuer, must apply subject only to appeal through the AAT. The focus of the committee's view is the elimination of the process of negotiating between developers and public officials over the level of valuation.

The Committee's View on Recommendation No. 89

The committee split 2:2 on whether third party appeals should be available only to adjoining lessees and an accredited residents' association. Two of the members (Mr Kaine and Ms McRae) accepted the position of the Government and the view of the Board of Inquiry; the other two members (Mr Moore and Ms Horodny) consider that the current appeals rights should remain and that the appeals body has the ability to reject vexatious appeals.

The Committee's View on Recommendation No. 91

AS for Recommendation No. 89

The Committee's View on Recommendation No. 96

The committee split 2:2 on whether appeals should be directed to the Administrative Appeals Tribunal (AAT)² or the Land and Planning Appeals Board³. The committee notes that legislation to transfer appeals to the AAT will be introduced in the Autumn sittings and members of the Assembly will then have the opportunity to present their views, and vote, on this issue.

Michael Moore MLA
Chair

25 June 1996

² *Mr Kaine and Ms McRae*

³ *Mr Moore and Ms Horodny*

