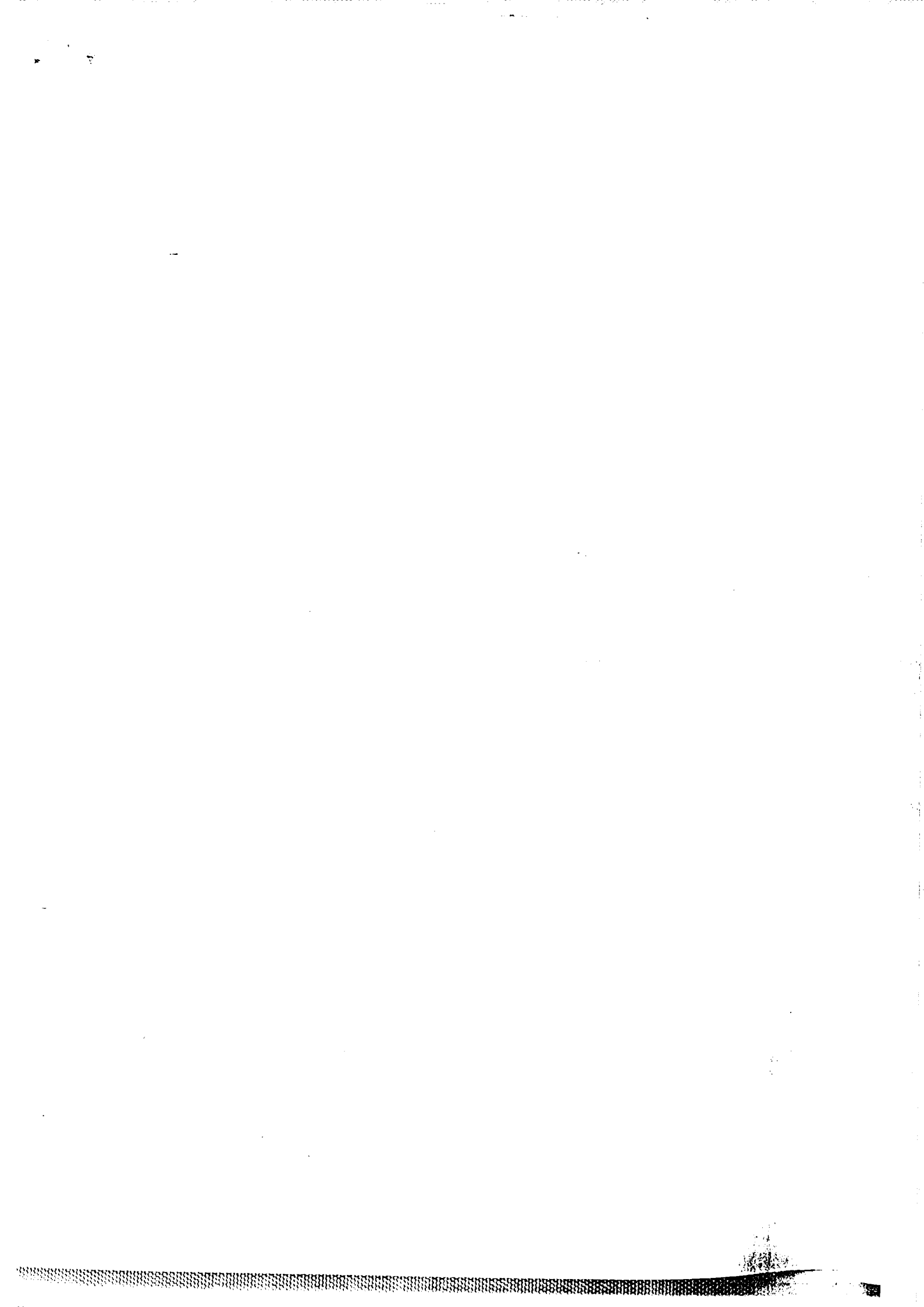


LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**INQUIRY INTO POSSIBLE CHANGES
TO
PLANNING LEGISLATION IN THE ACT**

**REPORT NO.35
OF THE
STANDING COMMITTEE ON PLANNING,
DEVELOPMENT AND INFRASTRUCTURE**

DECEMBER 1994



RESOLUTION OF APPOINTMENT

On 27 March 1992 (at the commencement of the Second Assembly) the Legislative Assembly established a Standing Committee on Planning, Development and Infrastructure to 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 relating to planning, land management, transport, economic development, commercial development, industrial and residential development, infrastructure and capital works, science and technology.

INQUIRY TERMS OF REFERENCE

That the committee inquire into and report on possible changes to the planning legislation in the ACT, taking into account the comments contained in the Todd Report and an undertaking by the Legislative Assembly to review the planning legislation once it had been in operation for some time, and noting also that the committee's report on the Draft Territory Plan made reference to the need for a review of the planning legislation; and further, that the committee aim to complete its report by early 1994.

Minutes of Proceedings of the Standing Committee on Planning, Development and Infrastructure, 18 June 1993

COMMITTEE MEMBERSHIP

Mr Wayne Berry (from 19 April 1994 - elected Chairman on 21 April 1994)

Mr Tony De Domenico (Deputy Chairman)

Mr Greg Cornwell (from 22 February 1994)

Ms Annette Ellis

Ms Helen Szuty

Secretary: Mr Rod Power

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LIST OF RECOMMENDATIONS

(The number in parentheses following each recommendation refers to the paragraph number in the report where that recommendation appears.)

General

1. *The committee recommends the planning legislation be reviewed to improve its layout and to better define key terms. (para 6.39)*
2. *The committee recommends that the Land Act be amended to include a statement of the objectives of planning legislation. (para 6.42)*
3. *The committee recommends that the Government investigate the feasibility of separating the ACT Planning Authority from the Department of the Environment, Land and Planning. (para 6.63)*
4. *The committee recommends that the guidelines bearing on the Territory Plan, and any further guidelines developed in the future, be disallowable instruments pursuant to the Subordinate Laws Act 1989. (para 6.84)*
5. *The committee recommends that the Planning Authority and DELP aim to have suitable processes and facilities in place such as to enable any person inquiring about the nature of planning legislation pertaining to a particular portion of land, to access that information quickly and accurately. (para 6.103)*

Consultation

6. *The committee recommends that the minimum time for public consultation on a draft Variation to the Territory Plan be doubled from the present 21 days to 42 days. (para 6.3)*
7. *The committee recommends that the consultative processes of the planning legislation and planning process be urgently reviewed by a panel of Government, industry and community representatives with a view to simplifying and rationalising the consultation processes. (para 6.61)*

Leases

8. *The committee recommends that:*

- *s167 of the Land Act be amended to provide that any dealings, whether by lessee or mortgagee, should be subject to approval by the Executive;*
- *the legislation be amended to provide that the value of improvements should be considered when the lease is terminated, surrendered or expires; and that the reference to "determination" in s174 should be changed to "termination" to make it consistent;*
- *the legislation be amended to permit the Minister to issue conditional or partial compliance certificates; and that the preservation of identified trees during the construction phase of a proposal be linked to the certificate of compliance;*
- *s180 (Transfer of land subject to building and development provision) should be reviewed;*
- *the legislation be amended to enable an order to be issued directing a lessee to address or rectify a situation in respect of a dirty block;*
- *the legislation be amended (with appropriate safeguards) to permit officers to enter onto leased land so that they can install, inspect and maintain public utilities; and*
- *the management objectives for a National Park and Nature Reserve in Schedule 1 be clarified. (para 6.12)*

9. *The committee recommends that an appropriate committee of the new Assembly inquire into the issue of renewal of commercial leases in the ACT, taking into account the material contained in submissions to this inquiry. (para 6.47)*

Inquiries

10. *The committee recommends that the extensive inquiry panel powers currently existing in the legislation be modified to remove the reference to power of entry, search and inspection. (para 6.34)*

11. *The committee recommends that the discretion to be exercised by the Minister when appointing an inquiry panel should be spelt out. (para 6.44)*

Environment

12. *The committee recommends that the statutory periods for evaluation and determination of preliminary assessments and comments be reviewed. The committee considers that the review should take every opportunity to rationalise the time periods so that they are consistent with other portions of the Land Act setting out consultation and determination periods. Further, the committee recommends that the format used for preliminary assessments (set out in Schedule 3 of the Land Act) be made more flexible to enable additional matters to be addressed in the preliminary assessment. (para 6.10)*

13. *The committee recommends that the legislation be amended to define environment in a broad manner; further, that the legislation spell out the criteria used to require the preparation of an environmental impact assessment, and also require such statements to list the potential adverse impacts of the proposal. (para 6.32)*

Heritage

14. *The committee recommends that a committee of the Assembly review the provisions and processes of heritage legislation in the ACT with a view to clarifying and simplifying the provisions and processes wherever possible; and that the review take into account matters raised in submissions to this inquiry. (para 6.8)*

Approvals

15. *The committee strongly recommends that urgent steps be taken to amend the legislation to combine the approvals process for handling design and siting applications, and building applications; and that the procedures used by DELP and the Planning Authority be simplified, rationalised and made widely known to the community. (para 6.16)*

16. *The committee recommends that the planning legislation, and the processes used by DELP and the Planning Authority, be amended to allow the establishment of a single and comprehensive consultation/approval process for a single development project (to include the lease variation process). (para 6.18)*

17. *The committee recommends that s247 of the Land Act should be clarified in order to more precisely define what is a 'minor' amendment to a design and siting approval. Also, the committee recommends that the Minister's discretion to approve minor amendments should be spelt out clearly, and that the Minister be provided with the appropriate criteria. (para 6.50)*

18. The committee recommends that the Government review the use of the 'stopclock' procedure by officials in DELP and the Planning Authority to ensure it is used appropriately and equitably. (para 6.59)

19. The committee recommends that s225(1) of the Land Act relating to controlled activities be amended to require a decision on an ex post facto approval (of an unapproved activity or structure) be made within a specified time, following which that unapproved activity cease or the unapproved structure be removed. (para 6.70)

Review and Appeals

20. The committee recommends that s7(3)(c)(ii) of the Land Act should either be removed entirely or else greatly modified to exactly specify the 'circumstances in which persons are not entitled to apply for the review of decisions referred to' in Part VI of the Land Act. (para 6.24)

21. The committee recommends that s7(3)(c)(ii) of the Land Act should be amended to make it clear that it is intended to be used only as a provision of general application and that it does not apply to prevent review of a decision as to whether a development proposal (in an established residential area) complies with Development Guidelines. Further, the committee recommends that the status of 'Development Guidelines' (when incorporated into a lease variation approval) be spelt out more thoroughly. (para 6.25)

22. The committee recommends the Land Act be amended to permit the Land and Planning Appeals Board to waive the lodgement fee for an appeal, in certain circumstances to be set out (including hardship). (para 6.53)

23. The committee recommends that the following sections of the Land Act relating to the Land and Planning Appeals Board be amended:

- s282ZG should be clarified to require the decision maker (delegate) to state any limitation to his/her powers as distinct from the wider powers of the Minister or the Executive;

- s282ZA should be amended to require all documents be lodged with the Board within 14 days of lodgement of the review application;

- s282U and s276 should be made consistent re the time to start counting from the date of the decision; and

- s282ZU should enable the Secretary of the Department to nominate persons who may be served with notices by the Appeals Board under Part VI of the Land Act. (para 6.55)

24. The committee recommends that details on lease enforcement activity be provided each year in DELP's Annual Report. (para 6.57)

25. *The committee recommends that the Land Act be amended to clearly define and limit the powers of the Land and Planning Appeals Board. (para 6.99)*

Defined Land

26. *The committee recommends that the legislation be amended to confine the use of 'defined land' to greenfields type of development and that consideration be given to changing the name in order to improve public understanding of the term; also, that the legislation spell out the meaning of the term. Further, the committee recommends that the Government institute procedures to enable community consultation at the conceptual stage of greenfields development. (para 6.30)*

Draft Variations to the Territory Plan

27. *The committee recommends that the planning legislation be amended to permit draft Variations to the Territory Plan to be put forward directly by proponents and not exclusively by the ACT Planning Authority. (para 6.92)*

Encroachments

28. *The committee recommends:*

- *there is a need to include appropriate definitions of "encroachment", "major encroachment" and "minor encroachment" in the relevant legislation;*
- *"major" encroachments should attach to the lease;*
- *"minor" encroachments should be "recognised" for a nominal fee;*
- *where a development or redevelopment application involving an encroachment has been granted approval under the Design and Siting Act, no further application fee or controlled activity process should be required;*
- *substantial encroachments should be paid for by the lessee; and*
- *the Real Property (Unit Titles) Act 1970 [should] be amended to provide for recognition of approvals for an encroachment under the Land Act or the Design and Siting Act, such that an approved encroachment will not prevent the registration of a units plan. (para 6.14)*

Betterment

29. *The committee recommends that an appropriate committee of the new Assembly inquire into betterment in the ACT, taking into account the material contained in submissions to this inquiry. (para 6.20)*

Unit Title Act

30. *The committee recommends that the Unit Title Act be reviewed to improve its relevance to planning issues in the ACT; and that existing legislation be amended to strengthen provisions relating to the amenity of unit dwellers. (para 6.66)*

Joint Venture Agreements

31. *The committee recommends that the Government publish the text of joint venture agreements (noting that there will be some commercial-in-confidence matters that should not be made public). (para 6.68)*

CHAPTER 1. BACKGROUND

Layout of the Report

1.1. The committee has dealt with a great deal of material in preparing this report. The inquiry's terms of reference, being very wide, have required the committee to gain an appreciation of the principal legislation affecting planning in the ACT (see Chapter 2). During the course of the inquiry, the committee received advice from Government officials that a considerable number of alterations to the legislation were being considered (see Chapter 3). As a central element of the terms of reference involved examination of the Todd Report, the committee set aside a specific section of this report to deal with Mr Todd's analysis and findings (see Chapter 4). In order to comprehend the detailed information contained in the 73 submissions made to the inquiry, the committee has summarised the main points of each submission (see Chapter 5). [The committee stresses that this summary is not intended to be exhaustive and is indicative only; however, committee Members see the summary as useful in highlighting common themes as well as areas of particular concern.] Based on this accumulated background, the committee has made findings and recommendations in its final Chapter (Chapter 6).

1.2. The report has three Appendices: the first lists submissions received by the committee, the second lists the persons who appeared before the committee, and the third reproduces a paper provided by the Department of the Environment, Land and Planning [DELP] that describes the principles used in the development of the principal piece of legislation affecting planning in the ACT. This paper is reproduced because it provides a useful oversight of that legislation as it is viewed by Government officials responsible for working with it on a daily basis.

Timing of this report

1.3. The committee is conscious of the fact that this report is brought down towards the end of the life of the Second Assembly and that the recommendations contained in this report will lie on the floor of the Assembly for consideration by Members of the Third Assembly (to be elected on 18 February 1994). This fact reinforces the committee's view that as much as possible of the information provided to the committee in the course of its inquiry should be placed on the public record within this report - so that the public and the Members of the next Assembly may have a suitable reference point for considering amendments to the planning legislation.

Conduct of the inquiry

1.4. The committee initiated its inquiry into ACT planning legislation on 18 June 1993, with terms of reference as shown earlier in this report. On 25 June 1993, the committee authorised the placement of advertisements in the local press calling for public submissions to the inquiry.

1.5. The committee requested briefings on the planning legislation by officials of the Department of the Environment, Land and Planning (DELP), the Law Office and by the Chief Planner. The committee expresses its appreciation to the Minister for the Environment, Land and Planning and the Attorney-General for their willingness to make officials available throughout the inquiry.

1.6. The first briefing by officials took place on 16 July 1993. The committee was provided with a paper on the *Land (Planning and Environment) Act 1991* (the Land Act) and the *Buildings (Design and Siting) Act 1964* (Buildings Act). The briefing paper described the legislation, listed the amendments made up to that time, and listed proposals being considered by officials for further changing the legislation.

1.7. At the meeting on 16 July 1993, the committee requested a list of all legislation impinging on the Territory Plan and upon planning. Further, the committee requested the Law Office provide comment on the nature of the relationship between Commonwealth legislation and ACT legislation.

1.8. A further briefing of the committee took place on 13 August 1993. The committee expressed particular interest in the progress being made by officials in drafting legislation to amend the Land Act to incorporate changes recommended by the committee in its report on the Draft Territory Plan (adopted by the committee on 17 May 1993 and tabled in the Assembly on 20 May 1993). The committee was informed that amending legislation was in hand; and in fact, the amending legislation was subsequently passed by the Assembly.

1.9. Also at the meeting on 13 August 1993, the committee authorised publication (on receipt) of all submissions to its inquiry, except for any submissions marked 'confidential' or which raised matters of a confidential nature. The committee resolved that any submissions of the latter kind would be referred to the full committee for a decision on whether to publish the submission or not. Also, the committee resolved to forward a copy of the submissions (not being confidential) to Government officials in order that they could respond to any matters in those submissions of particular concern to the committee.

1.10. At its meeting on 3 December 1993, the committee resolved to grant an extension of time for submissions to the inquiry into planning legislation (the new date for receipt of submissions being the end of February 1994).

Inquiry into ACT planning legislation

1.11. At its meeting on 28 January 1994, the committee agreed to consider the merit of an 'expert body' of planners to advise the Minister for Planning. The committee noted that a 'Planning Advisory Board' was initially suggested in the planning legislation prepared for the first Assembly, but was not proceeded with. The committee notes that the Minister for the Environment, Land and Planning subsequently instituted an expert advisory panel during 1994.

1.12. During the latter part of 1993 and the first half of 1994, the committee was preoccupied with significant draft Variations to the Territory Plan for North Watson, Richardson (Tuggeranong Homestead), Kingston and Kaleen (among others) - as well as with reporting on the 1993-1994 New Capital Works Program and on residential guidelines for Kingston/Griffith, the Red Hill/Deakin/Forrest/Griffith historic areas and the North Canberra area described as "B1" in the Territory Plan. As a result of these inquiries, the committee was unable to devote its attention to the inquiry into planning legislation. However, on 3 June 1994, the committee resolved to bring forward its consideration of the inquiry into planning legislation and requested the Government provide a submission. On 1 July 1994 the committee resolved to renew its call for public submissions by the placements of advertisements in the local press (the new date for receipt of submissions being 5 August 1994).

1.13. The committee received a total of 73 submissions, which are listed in Appendix 1. Many submitters requested the opportunity to appear before the committee when public hearings were scheduled. The committee decided to hear all key groups and all persons who requested to appear. Also, the committee decided to schedule one round of public hearings at night in order to meet the needs of persons unable to attend a day-time hearing.

1.14. On 9 September 1994 the committee was briefed by officials of the ACT Planning Authority (ACTPA). The officials summarised matters raised in submissions to this inquiry in relation to whether they raised legislative issues or issues more relevant to the two planning inquiries announced by the Minister for the Environment, Land and Planning on 19 August 1994. The two inquiries announced by the Minister were the Residential Redevelopment Review conducted by Mr Robert Lansdown AO CBE¹, and a longer-term strategic study of issues involved in residential development in the ACT.

1.15. The committee was fully cognisant of the fact that some matters raised by submitters were relevant to all three inquiries; also, the committee was aware of the difficulty of classifying some matters as more relevant to one of the inquiries rather than

¹ Terms of reference for the review are to examine:

- the impact of block consolidation, multi-unit development and design and siting decisions on the amenity of neighbouring residents;
- the extent and location of medium density development and redevelopment (including dual occupancies) throughout the city, and in particular suburbs and neighbourhoods;
- medium density redevelopment undertaken by the ACT Housing Trust; and
- any related issues which may arise.

another. The committee considers that in this report it has dealt with those matters in the submissions that are relevant to this inquiry's terms of reference.

1.16. At its meeting on 9 September 1994 the committee considered a letter from the Minister for the Environment, Land and Planning requesting the committee release submissions to the planning legislation inquiry that were relevant to the short term study into residential development. The committee agreed to this request and a copy of all submissions was subsequently forwarded to the Lansdown inquiry. The committee retains the original of all submissions.

1.17. The committee held public hearings over four days: Wednesday 28 September (all day), Thursday 29 September (afternoon and night), Friday 30 September (all day) and Friday 14 October 1994 (half-day). The committee heard from numerous individuals, business groups, the Housing Industry Association, the Planning Institute, the Law Society, the Heritage Council, conservation groups, community/residents organisations, a local builder, the Land and Planning Appeals Board, DELP officials and the Chief Planner. The Secretary/Chief Executive of DELP also appeared before the committee. (The committee specifically requested that DELP and the Chief Planner respond to matters raised during the public hearings.)

1.18. The committee thanks all persons who appeared before it and/or who provided a submission to the inquiry. A full list of witnesses is shown in Appendix 2.

1.19. The committee authorised publication of the evidence given before it at public hearings, together with publication of the supplementary material provided to the committee during and after the public hearings.

1.20. The committee met privately on several occasions after the close of public hearings to finalise this report. In its last weeks of considering the nature of this report, the committee had the benefit of perusing the Lansdown Report and the Government's response to that Report (released concurrently on 21 November 1994). The committee comments on these developments in the final Chapter.

CHAPTER 2. ACT PLANNING LEGISLATION

List of relevant legislation

2.1. Government officials informed the committee that the following legislation was directly relevant to planning in the ACT:

- *Australian Capital Territory (Planning & Land Management) Act 1988*
(Commonwealth)
- *Buildings (Design & Siting) Act 1964*
- *Land (Planning & Environment) Act 1991*
- *Land (Planning & Environment) (Consequential Provisions) Act 1991*
- *Unit Title Act 1970*
- *Heritage Objects Act 1991*
- *Lakes Act 1976*
- *Public Parks Act 1928*
- *Nature Conservation Act 1980*

2.2. Further, the officials informed the committee that the following Acts indirectly affect planning in the ACT:

- *Scaffolding & Lifts Act 1957*
- *Air Pollution Act 1984*
- *Common Boundaries Act 1981*
- *Enclosed Lands Protection Act 1943*
- *Mining Act 1930*
- *Noise Control Act 1988*
- *Public Roads Act 1902 (NSW)*

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- *Roads & Public Places Act 1937*
- *Trespass on Territory Land Act 1932*
- *Water Pollution Act 1984*
- *Liquor Act 1975*
- *Real Property Act 1925*
- *Real Property (Unit Titles) Act 1970*
- *Building Act 1972*
- *Building and Services Act 1924*
- *Careless Use of Fire Act 1936*
- *Litter Act 1977*
- *Cemetery Act 1933*
- *Dangerous Goods Act 1984*
- *Clinical Waste Act 1990*
- *Protection of Lands Act 1937*
- *Soil Conservation Act 1960*

2.3. The committee did not have the time or resources to investigate the particular way each of the Acts listed above affects planning legislation in the ACT. In this report, the committee has concentrated on the most substantive issues raised by the public, and by the Government, in the course of the inquiry.

Link to Commonwealth legislation

2.4. The committee asked the Law Office to advise it whether provisions of the Commonwealth's *Australian Capital Territory (Planning & Land Management) Act 1988* had created any difficulties for the ACT Attorney-General's Department. The advice provided by that Department was as follows:

[The matter was discussed] with the Chief Solicitor, the Acting Registrar of Titles and the relevant policy area of the Department and I have been advised that the legislation has caused no particular difficulty so far as this Department is concerned.

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... [Also,] the senior officer of the Chief Minister's Department who coordinated the preparation of the *Land (Planning and Environment) Act* ... has told me that he is unaware of any difficulty having arisen from the Commonwealth Act.¹

2.5. This is not the view of all submitters to the inquiry. One witness provided the committee with detailed justification for his view that existing ACT planning legislation was unlawful in that it did not satisfy Commonwealth requirements (see Chapter 5: sub.No.65 by Mr Chapman). Also, both DELP and the Chief Planner expressed concern about the administrative complexities involved in varying the Territory Plan which from the legislative roles of Territory and Commonwealth bodies.

The principal pieces of legislation

2.6. The ACT's *Land (Planning and Environment) Act* (and accompanying Schedules) [hereinafter called the Land Act] totals 162 pages in seven Parts. The first Part is two pages long and deals with 'Preliminary' matters. Part II of the Act deals with planning matters and runs for 20 pages. Part III deals with heritage matters and has 28 pages. Part IV deals with environmental assessments and inquiries - it comprises 20 pages. Part V deals with land administration and runs to 31 pages. Part VI deals with approvals and orders, and comprises 50 pages. Part VII deals with miscellaneous matters and is three pages long. The five Schedules attached to the Act take up five pages.

2.7. The preceding Chapter noted that the committee was provided by Government officials with a paper on the Land Act. The committee found this paper very useful in understanding how the Land Act assumed its present form. For this reason, the paper is reproduced as Appendix 3 to this report. The committee recommends that the paper be read in conjunction with this Chapter.

2.8. Some key points made in the Government briefing paper are that:

- the Land Act amalgamates five matters that were originally going to be in five separate Acts (viz planning; heritage; inquiries and preliminary assessment; land and leasing; approvals and orders);
- the Act accords with Commonwealth requirements;
- the planning section sets out the requirement for, and role of, the Territory Plan. It also deals with the matter of 'defined land' (discussed later in this report);
- the heritage section deals with the establishment of a Heritage Council and a heritage register;

¹ Advice to the committee from the Attorney-General's Department (dated 2 November 1993)

- the section dealing with environmental assessment and inquiries provides for a range of assessment types and inquiries;
- the land administration section provides for the management and administration of leased land and public land. The emphasis on leased land reflects the fact that the lease purpose clause is used in the ACT to define the nature of permissible activity (including development) on any parcel of land;
- the section dealing with approvals and orders establishes mechanisms for the control of these activities ('controlled activities'), as well as outlining the appeal rights of applicants and objectors. The section also deals with the issue of 'orders' where a controlled activity is being conducted without approval or outside the terms of the approval.

2.9. Among amendments made to the Land Act since its introduction on 2 April 1992 are the following:

[altering] the wording of paragraph 282(e) to make it clear that it was possible in certain circumstances, to limit third party appeals ...[and]

section 29 of the *Consequential Provisions Act* specifies that an order may be made to stop a person carrying out work on a building, if that building is on a place that is proposed for inclusion in an Interim Heritage Places Register. This provides protection for such places until such places are listed. This cover was set for a period of twelve months but due to the workload the Heritage Council was not able to complete its evaluation of places within the time frame. The amendment extended the period during which the order could be made to 18 months [after which it lapsed].¹

2.10. The Government's formal submission to this inquiry noted a further amendment made since July 1993. It involved the establishment of a Land and Planning Appeals Board:

which generally replaces the Administrative Appeals Tribunal as the review body for decisions made under the Land Act and the Design and Siting Act ...

The Government also ... has put into effect changes to the way "betterment" will be assessed. This has been done by way of amendments to the *Land (Planning and Environment) Regulations*. The Government has moved to eliminate the potential of lease purpose change from being taken into account and has implemented changes to the remission schedule so that only changes from residential to higher order residential, or commercial to residential, will attract a remission.²

¹ Briefing paper provided by DELP at the committee's meeting on 16 July 1993 pp2-3

² ACT Government *Submission to the PDIC's inquiry into ACT planning legislation* Introduction

2.11. In relation to the *Buildings (Design and Siting) Act 1964* (Buildings Act), Government officials noted that:

The *Buildings (Design and Siting) Ordinance* was introduced on 24 September 1964 to control the external design of and the siting of buildings and structures in the Canberra City Area. The National Capital Development Commission was required to consider a proposal for approval of the external design and siting of a building in accordance with its policies to construct and develop Canberra as the National Capital (s6(2)) ... [and] every section of the Act, except section 1 and 2 has been subject to one or more amendments. The most significant are:

- transfer of the appeals function to the Administrative Appeals Tribunal;
- extending the Act to cover the whole of the ACT;
- application of the approvals and orders provisions of the Land Act including introduction of third party appeals ...;
- changing the controlled activity from proposals in respect of the external design and siting of buildings to proposals in respect of any development involving any aspect of external design and siting; extending the scope of the Act to cover non-building works; introduction of implementation plans.¹

Possible amendments

2.12. The committee is aware that over the past year the Minister for the Environment, Land and Planning has expressed his interest in further amending the planning legislation; and that he is awaiting the report of this committee before introducing legislation into the Legislative Assembly. The papers attached to the Government's submission to this inquiry (sub.No.68) show that significant legislative change is being contemplated.

¹ *ibid* pp7-8

CHAPTER 3. CHANGES PROPOSED BY THE GOVERNMENT

3.1. The Government's submission to this inquiry included an Attachment that listed proposals to amend the Land Act that are being considered. The proposals are lengthy but, being directly relevant to this inquiry, are reproduced below under their various sectional headings:

Planning

1. Community groups often only meet on a monthly basis. Where a draft Plan variation is circulated for the minimum period, 21 days, the community group often finds it difficult to meet and respond within the required time. Perhaps this problem could be addressed by extending the minimum time for public consultation to 35 days.

Heritage

1. Simplify the procedures in Part II relating to the listing of a place of heritage significance that is on public land.

Environment

1. The statutory periods for evaluation and determination of assessments and comments received need to be reviewed. For instance, where the period for public comment on a preliminary assessment is extended, beyond the normal 21 days, the Minister may have to decide whether an Assessment is required before having considered all of the public comments. Presently, the Minister has 42 days from when the preliminary assessment is released to decide whether an Assessment is required.

2. Schedule 3 (Content of Preliminary Assessments) sets out the format that is to be used for preliminary assessments. While the format is suitable for most occasions, it would be useful if it could be varied, so that other matters could be addressed in the preliminary assessment.

Leasing

1. Section 167 (Consent to transfer by person other than lessee) provides that the Executive is required to agree to the transfer, assignment or subletting of leases that are specified under that section. This enables control to be maintained over their transferability.

The control exercised over the transfer, subletting or assignment of leases under section 167 is confined to the lessee. There is a concern that where a mortgagee takes possession of a specified lease then, not being the "lessee", the mortgagee would not be required to obtain the Executive's consent to such dealings.

The Land Act should be amended to provide that any dealings, whether by lessee or mortgagee, should be subject to approval by the Executive.

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2. Where a lease, upon which there are improvements, is terminated, surrendered or expires, section 173 (Lessee's rights in respect of improvements) provides that compensation shall be paid for improvements. The term "improvements" is defined as a structure or building approved by the Territory.

Rural lessees make pastoral improvements which maintain the viability of the land and the environment. Where such works are approved by the Territory, the value of the improvements should be refunded when the lease is terminated, surrendered or it expires.

3. The reference to "determination" in section 174 (Determination of value of improvements) should be changed to "termination" for reasons of consistency with terminology throughout the Land Act.

4. Under section 179 (Certificates of compliance) the Minister can issue a certificate when the building and development provisions of a lease have been complied with. In the past such leases were issued, especially with unit developments, before work was completed so the developer could commence to sell units. To ensure that the outstanding work (eg landscaping) was carried out, a bond was taken.

There is a concern that this issuing of "partial" or conditional certificates is not appropriate. Having issued such a certificate it is not possible to insist that further work be carried out.

It would be administratively more effective and practical, especially for developers, if the power existed for the Minister to issue conditional or "partial" compliance certificates.

The preservation of identified trees during the construction phase of a development proposal can be linked to the certificate of compliance. Penalty provisions for non-compliance could be provided.

5. Section 180 (Transfer of land subject to building and development provision) restricts the transfer or assignment of a lease where the building and development provisions in the lease have not been complied with. A similar provision existed in the *City Area Leases Act 1937* but under the Land Act the Minister is required to consent to the transfer if the conditions set out in section 180 are met.

The intent of section 180 is to prevent speculation in land at a cost to the community. The section may not achieve this so the wording and structure of the provision should be reviewed. At the least, the approval should be discretionary.

6. An application for a 'controlled activity' under Part VI of the Land Act has to be made on a form made available by the Minister. No such requirement exists in respect of orders, under section 256 (Application for an order). If orders were made on a form made available by the Minister, information necessary in establishing whether an order should be made could be required to enhance the processing of the application.

7. In the making of an order, directions may be given (eg not to conduct, to stop or not to commence a controlled activity). These categories appear adequate except for Item 4 Schedule 5 "failure to keep a leasehold clean". Presently, orders have been issued directing that the lessee stop conducting that activity. It would be preferable to direct a lessee to address or rectify a situation in respect of a dirty block.

8. The conservator is a concurring authority in respect of encroachment onto, under or over public land and a public road (Item 6 Schedule 4). Only encroachments in respect of public land should be sent to the Conservator.

9. Item 6 Schedule 5 provides that an encroachment onto, over or under public land can be subject to an order. A similar encroachment over a public road should also be subject to an order.

10. From time to time officers are required to enter leased land to install, inspect or maintain public utilities. The authority for such action is provided in various laws, eg *Building and Services Act 1924* and the *Electricity and Water Act 1988*.

It is considered desirable that matters relating to land use should be contained in one piece of legislation, the Land Act. The creation of a statutory easements/service corridors scheme is suggested.

Officers would be empowered to enter onto leased land so that they could install, inspect and maintain public utilities. They would be able to excavate for those purposes, but not remove or demolish structures that had been built over the utilities in accordance with law. They would also be required to restore the land as near as possible to its original condition and, where appropriate, pay compensation.

11. The objectives for a National Park and Nature Reserve, in Schedule 1, are not as clear as they could be. They need to be amended to differentiate between the objectives.

3.2. Further, the Government officials advised the committee that the following changes were being considered to the Buildings Act:

The use of the applied Part concept in the Act can be confusing and it would be possible to replicate the approvals and orders provisions of the Land Act in the Design and Siting Act. The provisions would be modified to remove reference to matters in Part VI which do not relate to controlling development involving the external design and siting of buildings and non-building works.

Approvals of the external design and siting of buildings and other works and approvals to erect buildings or carry out building works are granted under two separate Acts. Two separate fees are charged, there are two separate agencies to administer the Acts and each agency maintains separate records. Applications under the Building Act are not subject to public notification and third party appeal and there is little relationship between the two Acts although they form part of a continuum, at least in the eyes of the person proposing to build. The procedures should be combined.

Heritage

3.3. In relation to heritage matters, the Government's submission indicated that:

- problems exist re s52, which 'defines Aboriginal place and Aboriginal object as requiring to be significant in Aboriginal tradition' - this 'denies the relevance of this type of place to a wider community, especially those concerned with archaeology'. The Government paper goes on:

One [solution] ... would be to reword the definition of "Aboriginal heritage, place and object" so that it is descriptive of the category without the inclusion of value statements, eg those places and objects the product of Aboriginal society both traditional and contemporary.¹

- problems may arise where cultural surveys are undertaken on an unregistered Aboriginal place, in that those surveys may be delayed by the present provisions:

The Act needs to provide that where cultural surveys are being conducted by an agency of the Territory for the purposes of identifying heritage places, the provisions of the Act for reporting unregistered Aboriginal places do not apply.²

- there would seem to be a case for permitting a stop order on work at a non-Aboriginal site of possible heritage significance (as applies to an Aboriginal place);

- the process of heritage listing 'can be confusing to the participants' and involves extensive duplication, with the result that 'the length of time taken to move from a nomination to inclusion in the Heritage Places Register is at least 18 months'.³ The Government submission does not suggest how the process could be improved.

Approvals

3.4. In relation to the development approval process, the Government submission included a paper which made the following points:

- benefits will arise from integrating the Building Section into DELP because it brings together in one administrative unit the planning, lease administration and building approval areas, thus providing 'an opportunity to consider integrating building construction and design and siting and leasing variation approvals into a "development approval" process';

- 'design and siting is a controlled activity by virtue of s6 of the Building Act which applies the provisions of Part VI of the Land Act. In some applications, public notification

¹ ACT Government Submission to the PDIC's inquiry into ACT planning legislation Attachment E p1

² *ibid* pp1-2

³ *ibid* p2

and third party appeal is not required'. Also, 'leasing variations are a controlled activity and as such Part VI of the Land Act apply';

- a separate processing time is allowed for building approval, lease variation approval, design and siting approval. This staged process 'enables a lessee to stagger the cost of preparing the documentation required', which might not be the case if full documentation about all three approvals was required at the one time;

- building construction approval is not covered by the Land Act but could be made so if it was termed a 'controlled activity', meaning that the two processes (of building approval and design and siting approval) could be run together - rather than the present practice of generally obtaining design and siting approval before work proceeds on the building construction design;

- 'presently, there are three approvals required, and three approving authorities, the Building Controller, the Chief Planner and the Minister. If a development approval process was chosen, it may be that only one approval would be necessary. Some of the above changes could be handled administratively' but others require legislative amendment.

Consultation

3.5. In relation to the process of public consultation, the Government submission included a paper that made the following points:

- the Commonwealth's *ACT (Planning and Land Management) Act 1988* requires the Territory's planning legislation make provision for 'ascertaining and considering the views of the public';

- DELP has 'undertaken a substantive review of its processes ... [including] consultation arrangements ... [and] it is clear that some changes will need to be made to the way consultation is conducted'. These are likely to include 'that for a single development project the Department should aim for a single and comprehensive consultation process ... It was ineffective for consultation to occur on a variation to the Territory Plan in isolation to the consultation over a lease variation giving effect to a development under the Plan ... [and] the lease change or heritage consultation was somewhat academic to the community if they could not judge these in the context of the design and siting of a building on the land';

- the Government has released a discussion paper titled 'Towards a Government Protocol' on consultation, and DELP supports the Protocol.

Betterment

3.6. In relation to betterment, the Government submission included a paper which made these points:

- 'betterment was first introduced in the early 1970s when the leasehold system changed from being purely rental to one which was based on a one-off premium for residential leases. Before then, the level of rent charged would reflect the 'bundle of rights' that were attached to each lease ... [and] the larger the bundle, the larger the land rent. ... When a one-off premium arrangement was introduced, a system was required which would ensure that where a person sought to increase their bundle of rights then the community obtained a 'return', known as betterment, on the change';
- betterment was 50% 'of the added value associated with a lease variation' until 1991, when it was altered to 100% 'with remissions based on the age of the lease and any concessional aspects of the lease'. In September 1993 betterment was changed so that 'the calculation of the 'before' value would be on the basis that no lease purpose change would occur during the life of the lease [and] the remission schedule was changed so that there would be no remission for lease purpose changes from residential to commercial, or commercial to commercial, except in ... Fyshwick which was ... 'quarantined' from the changes for a year'; and no betterment would apply in the Kingston/Griffith redevelopment area (which relied instead on an augmentation fee, or flat fee per unit);
- 'while the main purpose of betterment is to return to the community the unearned increase in land value, it may also be seen as a tool of an urban renewal policy';
- 'the [1993] changes ... represent the best possible attempt to meet what can be at times competing community objectives'.

Encroachments

3.7. In relation to encroachments, the Government submission included a paper (dated August 1994) that incorporated public comment and which made these points:

- 'problems in the treatment of encroachments of buildings onto unleased Territory land have dogged the Department and the building industry for years', even though the Land Act treated encroachments as a controlled activity;
- 'there is a need to include an appropriate definition of "encroachment" in the relevant legislation';
- "major" encroachments should attach to the lease';
- "minor" encroachments should be "recognised" for a nominal fee;

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- 'where a development or redevelopment application involving an encroachment has been granted approval under the Design and Siting Act, no further application fee or controlled activity process should be required';
- 'substantial encroachments should be paid for by the lessee';
- 'the *Real Property (Unit Titles) Act 1970* [should] be amended to provide for recognition of approvals for an encroachment under the Land Act or the Design and Siting Act, such that an approved encroachment will not prevent the registration of a unit plan'.

CHAPTER 4. THE TODD REPORT

Terms of reference

4.1. In initiating this inquiry into planning legislation, the committee was conscious of the controversy in 1992-1993 about planning and development proposals relating to land in Torrens Street, Braddon (Section 22 Blocks 6,7,8 and 9). As a result of public disquiet, the Minister for the Environment, Land and Planning instigated an inquiry in May 1993 into the proposals in accordance with the following resolution of the Legislative Assembly:

That an inquiry be conducted by the Government into planning development proposals which:

(1) examines any difficulties identified with the development of Section 22 Braddon with the aim of finding a way to avoid such problems in the future;

(2) considers how the consultation process for similar developments can be improved.

The inquiry is to be conducted by a person nominated by the Minister, not being an officer of the ACT Administration.

4.2. On 24 May 1993 the Minister nominated Mr Todd (a former President of the Administrative Appeals Tribunal) to conduct the inquiry.

The proposal

4.3. The Torrens Street development was a joint venture proposal to redevelop four adjoining single residential blocks for medium density residential housing. The joint venture was between the ACT Housing Trust and a private corporation called Bobundra Pty Ltd. The Housing Trust intended to hold eight of an intended 36 units and was:

to receive the cash equivalent of the balance of the units comprised in its half-share. ... The Trust desired to increase the availability of public housing of the medium density variety as being more attuned to the needs of tenants seeking accommodation in the inner area than single attached dwellings.¹

¹ ACT Government *Inquiry into Planning and Development Proposals for Section 22 - Braddon* (the Todd Report) June 1993 p7

The approval process

4.4. Approval of the Braddon proposal involved three stages: a variation to the Territory Plan to endorse the change in land use to medium density development; varying the development rights contained in the lease (or lease variation); and approval of detailed proposals for Design and Siting. The first stage required the ACTPA to prepare a draft Variation to the Territory Plan for the site and advertise it for public comment. The draft Variation was released for public comment on 16 September 1992 with a closing date of 7 October 1992. Mr Todd commented that:

This period complied with the requirements of s19 of the Land Act, but may seem to be a rather short period of time to allow for the making of responses.¹

4.5. The ACTPA forwarded the draft Variation, together with a report on issues raised in written comments from the public, to the Minister for the Environment, Land and Planning, who referred it to the Standing Committee on Planning, Development and Infrastructure (PDIC) on 30 November 1992. The ACTPA imposed a number of 'Development Guidelines' applying to the development. The PDIC endorsed the draft Variation, which was then approved by the Executive and tabled in the Assembly, where it was not disallowed. The Variation became effective on 18 December 1992. Mr Todd observed:

Nobody, so far as I can detect, who was directly affected by the proposed development seems to have entertained any real objection to the Plan being varied so as to permit medium density development. Because, however, the Draft 22 Plan revealed a design and siting proposal that a number of people, including both local residents and wider interest groups, regarded as being contentious at the very least, the proposal itself began to become a matter of heated debate.²

4.6. The second stage of the development process involved seeking approval to vary the lease so as to realign the boundaries of the site (reflecting the amalgamation of blocks) and to permit the construction of a specified number of residential units. The proponents submitted a Development Plan that was considered to comply with the 'Development Guidelines' and so the application was approved on 25 January 1993. Some objections were received but, in Mr Todd's words, these:

were considered to have been dealt with at the stage of processing the Draft 22 Plan or to have been Design and Siting matters that would be subject to further processes of notification and objection.³

4.7. Mr Todd commented on this stage of the development process:

The Land Act provides in effect for the variation of leases in relation to land use, but it does so in a rather remarkable way. If a lessee wishes to seek variation of the

¹ *ibid* p8

² *ibid* p9

³ *ibid* p11

provisions of a lease, the approach must be through the provisions of s226 of the Land Act, seeking approval to conduct a 'controlled activity'. But let not someone not legally trained try to understand the vehicle for this. Indeed, not a few lawyers might struggle with it for a while. For certain activities in relation to the use of leased land are called by the Land Act 'controlled activities': see the definition in s4, and the list thereof in Schedule 4. That Schedule lists against each 'controlled activity' a 'Concurring Authority', the responsible Authority for concurring in the carrying out of the proposed activity. Another column provides for a penalty for unauthorised carrying out thereof. In some cases this is perfectly understandable, eg the use of residential land for carrying on a profession etc, or for mining. But one 'controlled activity' is 'the execution of a variation of a lease of Territory land', and there is a penalty of \$1000 for conducting such activity without approval. In sum, if it is desired to have a use-purpose clause varied, there must be an application to conduct a 'controlled activity', constituted by the execution of a lease variation, to me a procedure bordering on the bizarre, but apparently effective for the purpose.¹

4.8. The third stage of the development approval process was described by Mr Todd as follows:

A Design and Siting application for the proposed development was submitted on 15 January 1993, but no Design and Siting approval was granted as the lease variation process had not been completed. That application has now been withdrawn, and the proposal is now under further consideration. It appears that while 'indicative' plans had ... been made available as part of the process of Plan Variation ... the detailed expression of Design and Siting did not become available to those who had effectively become objectors until 18 February 1993.²

4.9. The Todd report quotes a recommendation of the PDIC in its report on the Draft Territory Plan that:

To avoid confusion and duplication of effort, in the case of urban renewal, applications for both lease variation and Design and Siting should be submitted concurrently.³

4.10. Mr Todd observed that some of the problems of the Braddon proposal would not have occurred had this recommendation been in place, in that those considering whether to object to the proposal would have known detailed design features. Mr Todd's own view was that 'the three processes would be better kept separate' but he found that 'there was not much support for this line of thinking'.⁴

¹ ibid pp9-10

² ibid p12

³ Legislative Assembly, Report of the Standing Committee on Planning, Development and Infrastructure *Draft Variation to the Territory Plan - the Draft Territory Plan* (presented 20 May 1993) Recommendation 11. Quoted in the Todd Report p15

⁴ Todd Report p15

The consultation process

4.11. Mr Todd considered that the consultation process involved in the Braddon proposal was poor:

in my opinion, statutory notice requirements do not really fulfil the role of consultation at all. They are a backstop, a fail-safe mechanism which responds in effect to a variant of the concept of natural justice. Somebody who may be adversely affected is given a 'last-chance' opportunity to object to a proposal that at that stage is going full steam ahead. It is obviously right that this should be so, and it is obviously the case that in many instances this will be enough. But it was put to me with some force in a number of submissions that wide and earlier consultation could profitably have taken place. In [the Braddon proposal], when an opportunity was available to look, at the very least, at the whole of section 22 as a model area for urban renewal, that opportunity would have been best served on this view by consulting all of the lessees of section 22, and perhaps all of those whose properties, being residential leases, surrounded it. It has already been seen that there was never any real objection to section 22 becoming medium-density residential. The problems were with the detailed designs and with the process. If the residents had been brought together at an early stage and an attempt made to have them become part of the process, much good might have come out of it.¹

4.12. One of only two recommendations of the Todd Report then followed:

In relation to residential redevelopment in urban renewal projects, there should wherever possible be consultation with lessees at the earliest possible stage of planning, as part of the process of planning itself before any kind of decision has been made, and entirely independent of later observance of statutory notification.²

The planning 'culture'

4.13. In relation to the consultative process, Mr Todd observed that 'a pattern of early positive consultation, forward-looking and not re-active, may not be part of the present planning culture'.³ In briefly reviewing Territory planning, Mr Todd noted the traditional reliance upon 'the lease purpose clause as the mechanism of control of land use'⁴ - reflecting the fact that 'the basis of Canberra planning was the lease from the Commonwealth to the lessee'.⁵ He thought:

that an attitudinal climate may have grown up of making 'site-specific' decisions about land-use, within which climate reasonable certainty, particularly on the part of prospective lessees considering purchase, may not on one view have been attainable.⁶

¹ ibid p16

² ibid p18

³ ibid p17

⁴ ibid p6

⁵ ibid p4

⁶ ibid p5

4.14. Mr Todd expressed his hope that this 'attitudinal climate' would weaken when the Territory Plan came into force.

The appeal process

4.15. Mr Todd noted the concern of objectors about that section of the draft Variation:

purporting to invoke s7(3)(c)(ii) of the Land Act which provides: "For the purpose of giving effect to the object of the Plan and the principles and policies referred to in subsection (2), the Plan may ... for the purposes of Part VI, specify ... circumstances in which persons are not entitled to apply for the review of decisions referred to in that part."

The variation that was made was as follows: "When a person applies under Part VI of the Land Act to execute the variation of a lease over Braddon Section 22 Blocks 6,7,8 and 9 and the variation of the lease is accompanied by a development proposal which complies with the Development Guidelines, no person other than the applicant for the variation to the lease is entitled to apply for a review of the decision of the Minister in respect of the proposed lease variation.¹

4.16. Mr Todd expressed the view that such a preclusion provision might not be 'legally effective'.² But he raised a more serious objection to use of the provision:

The philosophy underlying the use of the preclusion provision is, as I understand it, that since the Legislative Assembly has approved the Plan Variation, and thus has also approved the Development Guidelines, it is not appropriate for that to be the subject of determination judicially or quasi-judicially. Those Guidelines were not in fact part of the Variation which was, as stated in it, a statutory document. They were simply referred to in it. Also, the Variation itself stated that the Guidelines 'may change without notice in the future'. There is thus a serious question as to whether the Assembly should have been seen as having given to the Development Guidelines the force and effect that was attributed to them.³

4.17. Mr Todd then raised what he termed:

a still more fundamental objection. The question is whether, even if the Assembly should be seen as having given the Guidelines its blessing, whether the development proposal did in truth comply with the Development Guidelines. That question is clearly a question of fact, and is a question not only eminently suitable for external administrative review on its merits, but one which should clearly be left to be capable of such review. I recommend as follows:

Section (7)(3)(c)(ii) should be amended to make it clear:

(i) that it is intended to be used only as a provision of general application;

¹ *ibid*

² *ibid*

³ *ibid* p19

(ii) that it does not apply to prevent review of a decision as to whether a development proposal complies with Development Guidelines.¹

Review mechanisms

4.18. The final portion of Mr Todd's Report expressed 'strong support for ... external review of lease variation and design and siting decisions', while recording his personal objection to establishment of a Planning and Land Appeals Board as recommended by the PDIC in its report on the Draft Territory Plan. Mr Todd strongly supported continuation of appeals to the Administrative Appeals Tribunal.

Response by the Government

4.19. The Minister for the Environment, Land and Planning tabled the Todd Report and the Government's response in the Legislative Assembly on 17 June 1993. In terms of the current inquiry by the PDIC into planning legislation, the relevant portion of the Minister's speech is:

The Government is committed to review the *Land (Planning and Environment) Act*. It is a piece of legislation enacted by the First Assembly and bears some of the quirks of that Assembly. ... If my memory is correct, over 100 amendments were moved during the final debate, many in handwriting and with no input from the parliamentary draftsman. Some members may recall that an amendment passed in the morning had to be revoked in the afternoon, after officials pointed out that it rendered one section of the Bill unworkable. Given these circumstances and the contentions raised in comment during the formulation of the Bill, the Government will give consideration to the details of Mr Todd's report in its review of the legislation. The Government indicated during the debate on the legislation that it would be reviewing the provisions of the Act after it had seen how they were operating.²

4.20. In relation to consultation processes, the Minister noted that the ACTPA 'has constantly been refining the processes of consultation'. He reaffirmed the Government's commitment to consultation and stated his view that 'pre-consultation is the rule rather than the exception'.³

4.21. In other speeches on the Todd Report, some reference was made to the present inquiry by the PDIC providing the opportunity to review Mr Todd's recommendations and observations. This is one of the reasons why the inquiry's terms of reference incorporate taking account of the Todd Report.

¹ *ibid* pp19-20

² ACT Legislative Assembly *Hansard* 17 June 1993 p2036

³ *ibid* p2037

CHAPTER 5. EVIDENCE PUT TO THE COMMITTEE

5.1. This Chapter describes the key points raised in evidence tendered to the committee (by submission number). Quotations that are not footnoted are taken from the written submissions; quotations that are footnoted indicate the relevant page of the *Hansard* transcript of proceedings. The key points are listed in summary form, with italicised print used to show subject headings. (The term 'dvP' in this Chapter refers to a draft Variation to the Territory Plan; the abbreviation 'D&S' refers to Design and Siting.)

1. Conservation Council of the South East Region and Canberra Inc.

Goals of legislation should be changed, in particular the definition of environment (which is 'archaic and irrelevant') - urban renewal is not reflected in legislation yet is 'contentious and poorly enunciated' - 'most people find the legislation too complex, very cumbersome'¹

Consultation should be more efficient

Betterment should be properly enforced

Appeals: third party appeals and accessibility of appeals system should be enhanced - current system is conflict-based

Defined Land is described as 'iniquitous, misapplied, unfair and inappropriate'

Requests formation of an *ACT Planning Committee* 'analogous in form and function to the Environment & Conservation Community Consultative Committee' (to comprise the Chief Planner, NCPA, Public Works Engineer, Royal Institute of Architects, Conservation Council, National Trust, Ngunnawal Aboriginal community, PACT and community action group member)

2. Mr Raison (also see sub.No.43)

Betterment should be completely reviewed: favours 50% betterment (while ever the 'before' value excluded potential for change in land use) - suggests an augmentation fee for medium density development and a set fee per square metre of development for commercial uses or a percentage fee based on the value after the change of land use

Renewal of Crown leases: 'either the "last 30 years" requirement should be deleted or exceptions provided' - favours a nominal charge for renewal of commercial leases - favours perpetual leasehold

Defined land is a 'meaningless term', better to use 'development land'

Heritage provisions should be reviewed to provide for compensation for losses due to heritage listing (which at present applies only to Aboriginal sites)

¹ Transcript p37 Ms Rees (for the Save Our City Coalition and the Conservation Council of the South East Region and Canberra Inc.)

3. Conflict Resolution Service Inc

Consultation process: - 'current procedures for planning, environmental assessment, appeals and implementation can fuel suspicion eg the need for a precise series of assessment steps on a proposal makes it difficult to "front-load" the consultation process. The need to forward plan land sales can give rise to the belief that the decision has already been made, even if options are actually open' - planning processes are "planner centred" with little opportunity for 'direct communication and negotiation' - 'linkages between the formal planning processes and the political process are unclear' - should be more time allowed in legislation for 'the early stages of planning' with direct negotiation being encouraged (with mediators if necessary)

4. Watson Community Association (North Watson Subcommittee) (also see sub.No.34)

Betterment: 'the base for assessing betterment must be defined so that it reflects the site value in the current use in perpetuity' and then be levied at 100% (present procedures 'allow the potential for redevelopment to be built into the market value so that most of the betterment is included in the base rate') - 'any public subsidy for development or redevelopment should be clear and transparent in the ACT Budget [and] not implicit in land administration decisions and policies on betterment'

Defined Land should be abolished, as 'once the Assembly approves a Variation to the Territory Plan, responsibility for interpreting the policies and principles of the Variation to ensure they are adhered to rests entirely with DELP ... with developers [being] the only parties with appeal rights ... This is undemocratic and absurd'

Consultation: time for consultation on major projects should be at least 60-90 days - 'DELP should allocate funds as a matter of course for community groups involved in consultation, to meet financial costs of consultation such as hire of facilities, administrative and coordination costs, FOI requests, etc'

Appeal rights 'should be liberalised [and apply to] developments including multiple dwellings as well as single dwellings'

5. Mrs Howitt

Consultation should occur at the earliest stage of a development and negotiation should take place on both the concept and the details (including streetscape and D&S)

Betterment should be reviewed and should not be used to encourage redevelopment

6. Belconnen Community Council (also see sub.No.31)

Betterment: sliding scale of calculation should be dropped and 100% of increased value should be applied

The text of *Joint Venture Agreements* on land development should be publicly available

Consultation is required at 'the ideas stage' of a dVP - a workshop should be held to further examine appropriate consultation methods - three dimensional models in shopping

centres should be included in the consultation strategy - s19(1)(b) requires public comments on a dVP to be provided to the ACTPA 'within a period of not less than 21 days', but 42 days would be more appropriate; and the closing date should not be on or near public holidays - s19(3) permits the ACTPA to keep the name of a submitter confidential, but this power should rest with the Minister rather than the ACTPA - s19(7) requires the ACTPA to obtain information about 'public attitudes to the dVP' (for minor dVPs) but this provision is too general and needs enlarging

dVP process - site inspections by all key players should form part of dVP process

Defined land process 'usurps the agreed planning process'

Territory Plan - while acknowledging that Canberra is changing, repeated Variations to the Plan usurp the agreed planning process - s7(1) should indicate that Plan is meant to be dynamic and subject to change - s7(3)(c)(11) 'should be clarified to indicate that it does not apply to prevent a review of a decision as to whether a development complies with Development Guidelines or, if this is difficult, it should be omitted'

Environmental assessments & inquiries: what criteria trigger an EIS? - a panel needs to assess the likely environmental impacts - should use "precautionary principle" ('the environment must not be left to show harm before action is taken') - the definition of 'environmental impact' in s111 should include assessment of the biological, geological, hydrological and ecosystems transformation of an area - also, s11 refers to the 'environmental effect on the social system': does this mean, human or other biological social system? Similarly with respect to 'community' - s118(1)(b) and (2) permit the Environment Minister to exclude information from the public but this seems unnecessarily restrictive considering this is only an EIS - the time for people to comment on a draft EIS should be 42 days not 28 days [s125(1)(b)] - should clarify meaning of 'not in the public interest' in s133(b) and s142(b) - Schedule 3 under "environment" needs broadening and clarification eg "Human environment" and "Physical environment" need to be broken down into geological, hydrological and atmospheric - Schedule 3.3 should specify intact and modified ecosystems - Schedule 3.4 refers only to "Potentially Beneficial Impacts" but should be balanced by 'potentially non-beneficial impacts', as is implied in Schedule 3.4 which refers to 'a summary of the potential benefits and disadvantages of the project'.

Land administration: - s195(6) defines "natural environment" but should be broadened to following: 'all biological (geological, hydrological, intact ecosystems) and visual elements ...' - powers of inspection need clarifying eg s269(1)(d) seems unreasonably strong

7. Australian Institute of Valuers and Land Economists

Leases: uncertainty exists regarding the renewal of commercial leases - supports introduction of a system that permits renewal of commercial leases for a fee based on unimproved capital value [UCV] (perhaps 10% for first 79 years of the lease) - renewals within the last 20 years would attract a higher percentage - advocates right of lease renewal and perpetual leasehold: is a need for more security of tenure - re transfer of special leases, s163(8) 'prevents the transfer of a lease granted under the provisions of s163 [which will] prevent community organisations who have been granted land from obtaining mortgages using the property as security'(- under the previous system, the

restriction on transfer did not act to reduce the powers of the mortgagee exercising power of sale, and this should be reinstated.)

Controlled activities: unnecessary duplication of notification of controlled activities: 'If a lessee applies to vary a land use policy and a Crown lease purpose clause, there is a duplication of the public consultation process'

Betterment: - 'disagrees strongly with the Government's decision to simultaneously eliminate the "potential" of lease purpose changes from present value calculations and to apply a full 100% betterment for lease purpose changes involving changes from residential to commercial, or commercial to higher-order commercial' - favours 50:50 share of the increase in value - betterment should not apply to "B1" redevelopment, should use augmentation as applies in Kingston/Griffith

Land rent payouts: the 'artificial maintenance' of land rent payout figures above current market levels is creating difficulty for owners and mortgagees (eg North Lynham Shops), reflecting the fact the 'the premium required is the greater of the current UCV or the original auction reserve price' and much of the ACT has lower values now than in the 1980s

Heritage: 'It seems unreasonable for an individual's property rights to suffer from the Government's desire, on behalf of the community, to conserve that property. On the other hand, Heritage registration should not be an excessive financial burden on the community. A solution would be to review the registration process. The criteria should include economic grounds as well as the existing cultural and architectural requirements' - rates should reflect any heritage restrictions

Recommends a valuer be included on Appeal Board

Requests urgent introduction of a Land Acquisition Act

8. Mr & Mrs Adlam

Controlled activities and orders: - outlines in detail problems they have experienced - s225(1) does not require cessation of activity for which approval has not been received, and appears to be no way to enforce this: 'Although s225(1) of the Act states that "a person who, without reasonable excuse, conducts a controlled activity...other than in accordance with an approval, is guilty of an offence...", it does not require cessation of that activity, or the removal of an offensive structure, while subsequent ex post facto procedures are undertaken'. Timeframes for the rectification of such a problem are not specified and there is no provision for compensation to offended parties

9. ACT Heritage Council

Heritage: s67 prescribes seven day time limit for reporting unrecorded Aboriginal places but the Crown or its agents should be excluded from this requirement - s71, s256 should be amended to allow the Heritage Council [HC] to obtain stopwork orders 'without a substantial delaying administrative process' and the penalty for non-compliance should be \$20,000 - s68, s72 should provide that HC advice to the Minister be provided within 35 days rather than 21 days - management objectives for public land in s195(6) should modify

the definition of 'environment' to clearly include the cultural environment; the criteria in Schedule 2 for assessment of heritage significance is 'inadequate' and should be changed to one using a disallowable instrument - definitions of 'Aboriginal place' & 'Aboriginal traditions' in s52 should be expanded - definition of 'Relevant Aboriginal' should recognise custodial representatives of the local area, the Ngunnawal, and other relevant Aboriginal people, but the HC should have discretion about whom to consult on each place or object (except when it is assessing a place likely to have significance to the custodians of the local land where consultation with them should be a requirement) - a permit system should be developed to allow removal of objects from an Aboriginal place, to be available to nominated agents of the Minister, after consultation with any affected Aboriginal group. The permit should provide exemptions from s70 of Land Act and s39 of the Heritage Objects Act - should establish requirement to identify and assess the significance of all Aboriginal objects and places prior to planned initial disturbance of the ground surface in undeveloped areas - places of potential interest to the Heritage Council for inclusion in the interim Heritage Places Register should have a degree of protection until an appropriate evaluation has been prepared - should be provision for issue of orders to prevent damage to an unregistered place (and an interim conservation order made by the Minister to enable the HC to undertake an assessment within a small but reasonable timeframe. Places subject to such orders should be protected by similar provisions to that contained under s70) - should standardise listing procedures for heritage value determination and place. Current provisions should be reviewed to ensure consistency and that heritage values identified under other legislation can be recognised and readily transferred to the Heritage Places Register. Procedures should be established whereby the interim registration process can be undertaken under another Act and if endorsed by the HC, that listing proceed directly into the Heritage Register process - should protect places which contain flora and fauna species, some/all of which may not be endangered, but which have heritage value. Such protection should recognise seasonal limitations to identification. Should be able to order immediate protection to enable formal assessment

- definition of "conservation" should be amended to be the same as set down in the Burra Charter and the criteria described in Schedule 2 should become a disallowable instrument so that when national criteria are altered, it is relatively easy to amend local criteria to retain consistency.

10. Law Society of the ACT

Defined period is unclear (can Plan be changed while an appeal process is underway?)

Heritage:- Heritage Council should only give advice relating to existing status and not comment on likely future status

Environmental assessment and inquiries - panel powers, including power of entry, search and inspection, are too wide and have the potential to infringe on civil liberties (s152, s154): the powers are inappropriate since basis of task is to assess the environmental impact on a scientific basis, rather than assigning criminal issue of guilt or innocence - different standards of material confidentiality should not exist (s118, s133, s142) - should outline discretion to be exercised by Minister when appointing panel (the Minister simply "decides")

Land Administration: too many statutory instruments exist (making things complex and costly) - suggest perhaps that the criteria of general application could be moved into Regulations. Site specific criteria could continue to proceed by way of more flexible gazettal procedures - should clarify 'the ability of the Minister to certify compliance or partial compliance with a building and development provision under a Crown lease. Suggest improvement which would allow dealings with the Crown Lease to proceed without the necessity for the Crown Lessees to revert to Ministerial consent provisions to allow transfers, mortgages and the like to take place - 'interpretation of s180 by the department is contrary to its wording' and should be clarified - s181 should be amended 'by permitting a mortgage where the Crown Lessee did not borrow money, but simply wished to recoup his or her original expense' - Notice of crown lease termination is inadequate (s188) and should provide for notice to be given to the lessee, mortgagees, caveators and others who hold an interest in the property

Approvals and orders: - Time periods shouldn't include "day zero" - s247 allows 'Ministerial amendments to approvals ... in specified circumstances ... [including] where the Minister is satisfied that the amendment will not cause a significant increase in detriment to any person [but] there is no requirement for the amendment to be "minor" and Minister's discretion is not spelt out. Further, suggests there should be a power for Minister to amend applications during the approval process - 'notices to people about their appeal rights should set out the time limits by which an appeal must be lodged' - drafting problems with definition of "objectors" should be clarified - current method of managing pre-existing and D&S approved encroachments is unacceptable, as it requires public notification: 'a mechanism should be enacted to confirm the legitimacy of encroachments' and (where this cannot be applied) 'a controlled activity process may be justified'

Appeals Board should enable legal representation 'as of right' and not at the discretion of the Board - recommends return to the AAT - Registrar of Appeals Board 'should not be the person empowered to make orders, given that appellants will be turning to the Board itself if they have any objection to the making of the order'

11. Mr & Mrs Jedryk

Plan: Correspondence regarding objection to specific proposal (8/60 Griffith) - 21 days not enough time to comment - concerned about future character of Canberra

12. Mr & Mrs Dahlenburg

Plan: Correspondence regarding objection to specific proposal (1/16 Braddon) concerned about future character of "B1" areas and rest of Canberra

Consultation should be more effective

Inefficiencies between approving plans and notifying objectors

Fees: - Objects to \$100 fee to apply to Appeals Board (highlights problems with multiple applications etc)

13. Mr Henshaw

Plan: Correspondence regarding objection to specific proposal (1/16 Braddon) - concerned about future character of "B1" areas and rest of Canberra - calls for moratorium on urban infill

Consultation should be more effective

Inefficiencies between approving plans and notifying objectors

14. Miss Davey

Plan: concerned about impact of urban renewal policy on future amenity, rates and character of Canberra (in particular North Watson - requests reversal of the North Watson decision) - 'existing legislation is inadequate as it is allowing ad hoc developer-driven projects to be approved in spite of the protests by, and loss of amenity to, existing residents'

Consultation on dVPs should be more effective

15. Mr Kershaw

Plan: concerned about future character of "B1" areas and rest of Canberra: 'the redevelopment of existing detached residence sites in Canberra ... should not be singled out or "zoned" in the way that the Territory Plan has done' - critical of current Residential Land Use Policy and D&S Code for multi-dwelling developments which 'encourage the destruction of significant back garden environments, reduce privacy, results in inefficient and wasteful use of sites and to force cars into close proximity to private living rooms' - favours 'gradual, controlled, small-scale and incremental renewal/intensification ... [with] development conditions [that] make it attractive for the incumbent resident(s) to take part in the redevelopment' - favours precinct groups - opposes current requirement for amalgamation of three blocks in "B1" area - favours two storey development only (with attics permitted) and plot ratio of 0.5

Consultation should be more effective - suggests precinct committees

16. Ms Lintern

Plan: correspondence regarding objection and appeal to specific proposal (2/142 Kaleen): quotes finding of AAT that "the legislation governing the matter [of alterations to D&S approvals] is extraordinarily complex"- complexity of departmental procedures and 'who gave authority to DELP to alter the [quantitative] standards?' - concerned at rate and impact of infill and its impact on the future of Canberra

Appeals Board's role and powers are inadequate and its findings can be ignored by DELP

Fees: objects to fee to apply to Appeals Board

17. Mr Kirby

Betterment should not favour developers

Leases: enforcement of lease provisions is poor (refers to Starlight Drive-in)

Plan: requests moratorium on redevelopments

18. Minders of Tuggeranong Homestead (Inc)

Plan: concerned about future of urban planning in ACT - requests moratorium

Consultation - 'one month is not long enough for a community group to prepare a detailed submission' - due weight must be given to public comments

Defined Land means 'community has no right of appeal and need not be consulted'

Approvals: 'there is no satisfactory definition of what constitutes "minor" alterations'

Environment: - EISs should be prepared for large proposals (not just Preliminary Assessments [PA]) and done by 'an independent body, not the ACTPA'

Heritage and dVP processes should be linked, ie 'where a Heritage Citation is involved, it should be gazetted before a dV is considered' - criticises HC for 'ignoring heritage features on site at Tuggeranong Homestead'

Leases need to be strictly enforced

19. Mr Cronin

Act gives too much power to planners and developers and does not provide certainty to lessees re existing uses and redevelopments - concerned about future of urban planning in ACT and requests inquiry into 50/50 policy and overturning North Watson decision

Consultation should be effective and meaningful

20. Mr James

Plan does not provide suitable framework for timing of redevelopment

Lease administration and ACTPA too closely linked: 'Within DELP there are at least two distinct and adversarial cultures. The culture within the land/planning areas reflects 'capture' by the development industry. This is in stark contrast to that of the Environment Division's. The Division's ability to put forward views or argue against development are compromised by its location within DELP. This severely limits the Minister's/Government's ability to get access to a full range of advice' - ACTPA should be more independent - suggests establishment of 'an independent land commission with a board appointed by the Legislative Assembly'

21. Mr G Dunstone

Plan needs to provide certainty for residents but does not do so - Plan needs to provide suitable framework for timing of redevelopment

Lease purpose changes 'should not proceed without significant community support' and compensation should be 'paid to nearby residents for loss of amenity'

Population growth in the ACT should be reduced

22. Ms Hodgman

Leases:- compensation should be paid to neighbours when amenity reduced (as North Watson, which should not proceed)

Plan needs to provide certainty for residents

23. J.R. Dickson

Plan: urban infill should not proceed because 'most infill is not built in concert with the local suburb in which it is situated'

24. Mr Bills

Plan: objection to specific proposal (1/49 Campbell)

25. Mr Turner

Plan: objection to specific proposal (North Watson)

26. Ms Perlberg

Plan: objection to specific proposal (North Watson) and calls for Canberra's inner areas to be protected 'from developer greed and destruction of their existing characters'

27. Mr Van Kleef

Plan: objection to specific proposal (North Watson)

Consultation should be 'genuine'

28. R Evans

Lease administration and ACTPA too closely linked - not enough transparency in negotiations between lease administration and lessees - legislation should require DELP 'to enforce lease conditions as soon as they are breached [and] leases remaining in breach should be terminated automatically after a set time from the discovery of the breach and its notification to the lessee'

29. Forrest Heritage Action Group

Plan: objection to specific proposal (6/46 Forrest) - Territory Plan should 'have a separate policy objective and performance criteria for development as compared to redevelopment' - the Guidelines for the Griffith/Red Hill/Deakin/Forrest historic areas are 'inadequate, are not legally enforceable and need review' to place these suburbs on the Heritage Places Register - multi-dwelling housing should be 'adjacent to town centres, principal public

transport routes, group and local shopping centres and public open space and playing fields' but not elsewhere

30. The Save Our City Coalition

Plan: ad hoc planning decisions are causing uncertainty and loss of amenity - calls for moratorium on urban renewal - should be compensation for lessees suffering loss of amenity due to land use changes or lease changes - 50/50 policy of residential development 'is not set down in the Territory Plan although it has fundamental implications for the operation of the Plan' - existing D&S Codes 'encourage the destruction of significant front and back garden environments' - legislation should incorporate 'landscape guidelines and tree preservation legislation' - legislation should require 'a formal public hearing and the preparation of a social impact statement' for infill proposals which increase dwelling density 'say by more than 15%'

Lease system eroded (no enforcement), leading to land speculation and hidden subsidies for redevelopment - leases in breach 'should be automatically terminated no later than 21 days after the breach comes to the notice of the ground landlord' - DELP and ACTPA 'are excessively influenced by development interests and have too much discretion in administering the public leasehold system ... [leading to] backroom deals' - 'the Administration's advice to Government and the Assembly is not always balanced and honest' - 'too much authority is delegated to DELP and to the ACT Executive to make and interpret legislation on land administration' eg betterment changes should involve the whole Assembly - ACTPA should 'operate more independently of DELP ... [and] should be responsible to a Minister other than the Land Minister' - a Land Account should be established 'into which all land premiums and betterment revenues are paid' - should establish a Land Management Authority 'at arm's length from Ministerial control, [to] maximise the long-term financial return to the ACT from its public land assets [and to] be responsible for most redevelopment which would be handled by purchasing leases at existing use value and actioning with new lease terms'

Consultation is 'unfair and inadequate, especially [on] urban infill and redevelopment' - consultation process is used 'to promote and legitimise a pre-determined outcome and to gather information to be used against objectors'

Appeal rights are too narrow and should be permitted re defined land provisions in urban infill proposals and 'where the Government is a joint venture partner in the development'

Betterment: the legislation should specify 'that "before" valuations for calculation of betterment exclude any expectation of lease change. For this to work effectively, concessional betterment charging provisions must be removed'

Heritage: Government is not responding 'to resident requests for certain principles for sensible housing extensions'

Defined Land provisions should 'be limited to greenfields development' and not be apply 'to prevent appeals on development approvals or conditions in existing suburbs where the Government is a joint venture partner in the development'

31. Belconnen Community Council (also see sub.No.6)

'The complex legislation created over the years as a result of our unique leasing system and its attempts to address every possible situation has created over the years unsatisfactory patchwork law'

Defined Land provision should be 'repealed or abolished'

Leasēs for community purposes should require 'facilities to be built within a negotiated time frame [and] failure to meet these [conditions should] carry automatic forfeiture of the lease' - DELP approves lease variations 'in unannounced deals, to preserve developers' privacy and commercial advantage'

Land account should be established for 'all land and betterment revenue'

Plan: the 50:50 policy 'has no mandate from the community and is unacceptable' as it places local amenity 'under threat'

Consultation 'minimises the information given [and] ... is not genuine' - 'not enough time is allowed for information to be absorbed and often relevant data is withheld from the inquiring parties' - all PDIC hearings should be open to the public

Appeals process does not have teeth - 'the Appeals Board should be answerable to the ACT Legislative Assembly only and make an Annual Report available to the public'

Heritage Council should be 'independent of DELP and made only answerable to the Legislative Assembly'

32. J & J Donnelly

Dual Occupancy provisions were introduced 'surreptitiously by unpublicised changes to regulations' and dual occupancy is 'invariably tasteless, often out of keeping with the locality' - the Act should be amended 'to include stronger provisions requiring community consultation before the introduction of any new regulation ... that will significantly affect community values [and] where a majority of neighbours object to a development on the grounds of damage to the area's amenity value to them ... [the objection] should generally be ... upheld'

Plan: calls for moratorium on dual occupancy

33. Hunter Street Neighbourhood Group

Legislation: 'the text is complicated, if not contradictory, and looks in dire need of clarification' - 'the current planning legislation is flawed and should be thoroughly reexamined with a view to amendments to more adequately protect all Canberrans from development and redevelopment that will have an adverse impact on their personal and residential amenities' - planners and developers work on the development plans 'long before the local residents hear of them [which procedure] is understandable but ... discriminatory'

Plan: objection to specific proposals (6/25 & 24/26 Yarralumla) - opposes provisions of residential land use policy and D&S Codes: Appendix III-2 gives 'the impression that, if

the "performance measures" are met, a multi-dwelling redevelopment proposal will be approved. One has to look elsewhere in the Act to find out that this is not the case' - 'the "performance measures" say nothing, eg, about whether the housing will be "affordable" [or] whether they are located "adjacent to town centres" [or] whether they will help meet "the changing needs of residents at different stages of their lives" [or] whether the proposals "had the potential to change the character of residential areas" [or] whether the housing "conserves and enhances valued features of the Territory's natural, built, social and cultural environment" [or] whether they contribute to "meeting social needs and maintaining quality of life" - concerned about spread of "Kingstonisation" - NCPA's guidelines for Hunter Street are breached and the redevelopment would be inconsistent with the National Capital Plan - the Plan's Principles (in Part A of the Plan) should be enforced eg concern for preservation of heritage, environmental quality and high standards of urban design: 'it is only after the local residents complain that the fine principles come into play' - 'The Territory Plan said it aimed to give "certainty". But it seems to have left nothing but uncertainty on all sides' in respect to Hunter Street developments where there exists 'a fundamental contradiction between the principles the Territory Plan espouses in terms of recognising the importance of urban environment issues and the procedures the Territory Plan adopts in terms of consideration of actual multi-dwelling development proposals'

Consultation: 'The developer can take his time about when to start the clock ticking. (In the case of Block 24 Section 26 it was started in the middle of a long weekend, and was back-dated at that.)'

34. Watson Community Association (North Watson Subcommittee) (also see sub.No.4)

Plan: 50/50 policy 'will not save land and prevent ... urban sprawl' as infrastructure takes up a considerable portion of land nor will it provide additional pupils for schools as 'medium density housing is simply not attractive to families with children', nor will it be environmentally helpful because private vehicle use is entrenched; further, it will reduce gardens - opposes North Watson development

Consultation processes 'in the planning legislation need substantial amendment to ensure that consultation is real' - DELP and ACTPA do not provide adequate information before the period for public comment closes, and the time to consider the information also is inadequate - DELP's formal response to matters raised should occur before the variation proceeds to its next stage - 'opponents of Variations should have the opportunity of presenting their final case to the PDIC' - period of consultation should be extended to 60 days

Defined land provisions for infill projects deny 'residents the opportunity to comment upon plans which have a very real and substantial impact on them'

Appeals should be permitted on multiple as well as single dwelling developments

Betterment concession should be 'abolished' - 'the base for assessing betterment [should] be defined so that it reflects the site value in the current use in perpetuity' and be levied at 100%, removing any 'subsidy to developers' - betterment is 'fundamentally a revenue or

taxation matter and ... [should] be considered by parliament and set down in legislation, not set down by the Executive in regulation'

Lease conditions not enforced (eg Yowani, Starlight Drive-in and Tuggeranong Homestead) - legislation should stipulate that breaches will be terminated 'within 30 days unless the breach is remedied' - DELP's Annual Report should 'detail enforcement activities as one of its performance measures'

Land Account should be established for 'all land and betterment revenues' - land assets should be administered by 'a separate statutory authority, possibly attached to the ACT Treasury'

Environment Division should be separated from DELP and perhaps report to the Chief Minister - ACTPA should become 'an independent planning commission with a board appointed by the Legislative Assembly and including representatives from industry and the community'

35. Mrs Filmatter

Concerned with a particular dual occupancy application: 'the way the Department uses s247(3) which the Act states is for minor amendments and then accepts amended plans that are different from the originally approved plan ... needs to be examined'

36. Ms Smith

Leases not enforced by DELP and 'the political misuse of the leasehold system to encourage housing development at the expense of other uses must be stopped' (eg North Watson)

Plan: opposes urban consolidation policy

Legislation: 'Prior to the Land Act, ACT lessees could and did apply to the Supreme Court against lease conditions which had adverse planning or strategic considerations, although residents had little redress on detailed issues of design and siting. The situation is now reversed'

37. Mr Watson

Consultation: 'in the era of the NCDC, planners were obliged to call for public submissions on detailed suburban layouts [followed by] public hearings ... [before] a parliamentary committee ... [with] planners present for questioning by the committee' and the PDIC 'should now take this role' (cites lack of community input into Dunlop's open space requirements, block sizes, etc)

Defined land should be 'thrown out'

'ACTPA should be directly answerable to the Assembly (also an Advisory Board would help generate ideas) and not a Minister as at present. In practice, ACTPA is now a small subset of DELP; its 'heavies' make mincemeat of this small group' - ACTPA 'is compromised by its association with DELP'

38. C & S McKew

Plan: opposes infill development - the Plan's Guidelines 'are far too loose ... [and] are interpreted with excessive elasticity ... [They should] be made rules'

Consultation and appeals: 'we have concerns about what rights neighbours have when the plans that they have originally seen (and have either agreed to or objected to) are not then followed. What has been happening is that publicly notified plans are approved by the ACTPA, and then during the building of the structure, amendments are made to the plans (often substantial) and neighbours do not get a right of objection because further notification is not required' - 'we need firm disciplinary measures against builders/residents that go outside the approved plans'

Call for moratorium

39. Yarralumla Residents Association (Residential Redevelopment Group) Mr Thornton

'the Land Act, the Territory Plan and the associated policy and procedures are fundamentally flawed in both a legal and moral sense' - calls for a new Plan and a moratorium on urban infill which results in 'the wholesale destruction of amenity and lifestyle'

Betterment provisions are inequitable and the '50% rebate on residential redevelopment should be immediately discontinued'

40. Yarralumla Residents Association (Residential Redevelopment Group) (Mr Clarke)

Plan: call for moratorium and 'implementation of specific guidelines for all redevelopment in Yarralumla, along the lines of those applying in the Forrest/Red Hill/Deakin/Griffith historic areas' - amenity of Yarralumla was protected by former controls over subdivision, footprint of the dwelling (to not exceed 35% of the block size) and minimum setbacks of at least 10m from the front boundary - public notification and appeal rights under the Plan are a 'Furphy' as 'a footprint of 65% is allowed, with a setback from the front boundary of 4m' - medium density development is not attractive to families with children ('Kingston has already lost its school') and does not increase viability of local shops

41. Mr Lamb

Objection to particular development (8/36 Deakin) - major concerns regarding processes and quality of outcome: 'a developer gains special privileges, then steadily pushes all limits of regulations, slowly modifies proposals, and delays action on various undertakings etc, until the development bears little resemblance to the original proposal'

Leases not enforced re planning or leasing controls and 'the degree of discretionary power [legislation] allows is too great for implementing authorities so closely aligned with the

commercial interests of a developer'¹ - 'Lease Administration Branch has failed to pursue many known breaches of lease conditions'

Plan has no vision

Conflict between NCPA & ACTPA - need one planning body, perhaps 'a joint committee of ... ACT Assembly and Federal Parliament Members, with a contracted expert secretariat, charged with setting the Territory Plan within a national concept'

Appeals: should be greater personal accountability by administrators, perhaps by 'giving the Land and Planning Appeals Board the power to investigate not only decisions, but also conduct in relation to decisions, and the authority to recommend disciplinary action'

42. Canberra Business Council Inc. (submission prepared in conjunction with ACT Chamber of Commerce and Industry, Australian Institute of Valuers and Land Economists (ACT), Building Owners' and Managers' Association (ACT), Housing Industry Association (ACT Division), Master Builders' Association (ACT), Real Estate Institute of the ACT Ltd, and the Royal Australian Institute of Architects (ACT)

Land administration system and Plan are failing: 'When compared to the former system, the present system has increased uncertainty, is less flexible in accommodating the variety of circumstances regularly occurring, has lengthened the time for processing applications to the system and is unnecessarily complex and costly for both Government and all the citizens of the ACT' - suggests 'a joint Government/industry working group to progressively address the shortcomings' - calls for 'changes to the lease variation procedures; giving the Minister greater discretions to modify procedures; simplifying D&S procedures for minor changes on residential leases; overhauling the unit Titles Act; and reviewing the inter-relationship of Territory Planning and National Capital Planning'

Todd Report's recommendations are given qualified support: with respect to detailed consultation at the earliest stage of planning for a proposal, this unable to take place on the basis of detailed plans when only conceptual plans have been prepared; with respect to amendment of s7(3)(c)(ii) of the Land Act, it should apply only to infill areas

Plan is interpreted inconsistently by ACTPA - the Plan's Guidelines 'should not be given the same mandatory status ... [as they are] a benchmark to guide flexible use of planning discretions' - unless PDIC has examined them, they have not received public comment and yet they are 'alterable without notice or public consultation'

Lease renewal policy should be announced by Government - should permit renewal for a fee of 10% of UCV

Consultation with public should be subject to 'a full cost-benefit justification' - 'apart from Plan changes, consultation should be only available to those who can demonstrate their private interests area directly disadvantaged by a proposal' - s7(3)(c) of the Land Act should 'be strengthened to avoid discretionary use of full public consultation where more limited consultation might reasonably be applied' - 'public consultation should not be

¹ Transcript pp313-4

required where a previous decision that has been the subject of consultation is modified to reduce the scale or impact of the original proposal that was approved' - notification to "adjoining properties" should be 'limited to those directly affected' - PDIC should 'review past public consultations to see if there is a need for them to continue, differentiating between residential leases, and commercial and industrial leases' - 'existing procedures for residential D&S applications are adding to the costs of both the Government and householders for relatively simple home additions, building of domestic garages and the like. There is an urgent need for review of the full public consultation criteria for such minor works'

Approval process takes too long for lease variations and D&S approval - stopclock procedure 'is being used at whim by Government officers' - 'is no need for an appeal period when a decision fully meets an applicant's wishes and there were no objectors during earlier public consultation' - should 'be a system to deal with simple and uncontentious lease changes similar to the former s72A (*Real Property Act*) procedures where such changes could be dealt with in times as short as a week as opposed to the present four to five months' - should 'be a process that parallels the NSW practice where applicants can elect to either have their development application and building application rolled into one process, or to have the application treated successively. In the ACT, it would be beneficial if D&S Applications and Building approvals could also be rolled into one or taken successively at the election of the applicant. [And] there could even be an extension to grouping lease change, D&S and building approval, if applicants can achieve sufficient assurance of success in regard to a lease change in order to justify the expense of the full design phase. We see significant potential efficiencies from such a process. The suggested pre-application process could make such integration viable option. It would significantly save Government costs'

Fee structure for approvals has anomalies

Unit Title Act should be urgently overhauled

ACTPA staff and lease administration staff 'do not appear to have the discretion to act on the merits of a case' whereas 'the factors in Appendix 1 of the Territory Plan area used by the Authority in a discretionary manner to limit or refuse approvals' - 'in decision making there is a tendency to read down the Territory Plan and to require additional conditions in approvals not based on criteria in the Plan eg to impose particular plot ratios can go to the heart of the viability of a project'

Betterment changes in September 1993 detrimentally affected major commercial redevelopment involving upgrading of a lease - no incentive - 'the previous 50:50 share [is] appropriate'

43. Mr Raison (also see sub.No.2)

Lease renewal of commercial leases still unclear - favours former practice of charging 10% of the UCV - if lease not removed, then 'the lessees [should be] entitled to compensation for the added value of improvements' - favours perpetual leasehold

Betterment provides no incentive for commercial redevelopment - favours 50% as in residential or commercial leases

Heritage registrations are excessive - criteria for registration should include economic circumstances

Plan:- unit titling, rather than dual occupancy, is the problem: the second property on a block should not be able to be sold separately (with exceptions for large blocks, inner suburbs, park frontages, etc) - opposes arbitrary and unenforceable figure like 50:50 urban infill - similarly opposes figure like maximum of 20% employment in Civic

44. Australian Institute of Valuers and Land Economists (Inc.) (also see sub.No.7)

Lease renewals of commercial leases remain uncertain - favours 'automatic right of lease renewal and perpetual leasehold' - 's163(8) of the Land Act prevents the transfer of a lease granted under the provisions of s163. We believe the enforcement of this section will prevent community organisations who have been granted land from obtaining mortgages using the property as security ... [and] the previously adopted clause that the restriction on transfer does not act to reduce the powers of a mortgagee exercising power of sale needs to be reinstated'

Mortgage security - land rent payout policy creates problems for mortgagees

Consultation: 'If a lessee applies to vary a land use policy and a Crown lease purpose clause, there is a duplication of the public consultation process'

Betterment: opposes 'the Government's decision to simultaneously eliminate the "potential" of lease purpose changes from present value calculations and to apply a full 100% betterment for lease purpose changes' from residential to commercial, or commercial to higher order commercial - '100% betterment removes the incentive for Crown Lessees to offer their properties for redevelopment and in most cases makes redevelopment non-viable' - favours 50:50 share

Heritage: 'It seems unreasonable for an individual's property rights to suffer from the Government's desire, on behalf of the community, to conserve that property. On the other hand, Heritage registration should not be an excessive financial burden on the community. A solution would be to review the registration process. The criteria should include economic grounds as well as the existing cultural and architectural requirements' - should also provide for compensation for loss in value due heritage listing - 'statutory valuations for municipal rating [should] take any Heritage restrictions into account'

Appeals Board should include a valuer

Calls for a 'workshop to discuss relevant issues in relation to the legislation'

45. National Trust of Australia (ACT)

Plan 'is flawed in not ... recognising differences in various parts of Canberra's residential areas and ... does not apply area specific planning and design guidelines which are statutory instruments to the Plan ... [and which recognise] such considerations as planning history and heritage values, size of blocks, appropriate density regulations ... In essence,

this is the type of planning scheme extant in other cities based on the concept of zoning with concomitant schedules setting out standards as statutory instruments of the Plan' - Plan should 'recognise the existence of a Critical Historic District resulting from Griffin's plans and the 1926 Federal Capital Commission Plan' (covering most of the central Canberra valley)

Heritage planners are required in ACTPA or Heritage Unit, and Heritage Council 'should have direct access to the Minister on matters relating to the Critical Historic District' and other areas

46. Mr Roberts

Land development should 'return to the land auction system'

Plan: multi-unit development shows no recognition of 'overall impact on the neighbourhood' - Greenway and Bonython are nowhere near the quality development of Swinger Hill, Urambi and Cook-Aranda - solar access rights should exist in legislation, so that a neighbour's house cannot block solar access - D&S for a garage in Gordon has taken over four months 'after the initial green public notice was put up on my block': ACTPA accepted submissions 'from people who were not immediate neighbours' and has tacitly accepted Land Corporation covenants on the blocks as binding when this is not the case - calls Palmerston a 'disaster' - calls for a committee of architects and town planners to review multi-unit development

Lease enforcement is poor

47. Ms Black

Land: should return to public land development

Plan: people do not want 'profit-maximising, cramped rabbit hutches like at Palmerston'

48. Turner Residents Association

Plan: 'the situation is so chaotic and unsatisfactory that there should be a Royal Commission into planning and leasehold in the ACT'

49. Mr Larson

Defined Land provision should be abolished particularly when not greenfield development (North Watson refers): 'Once the Assembly approves a Variation to the Territory Plan, responsibility for interpreting the policies and principles of the Variation, to ensure they are adhered to, rests with DELP. Such interpretations are made in the context of continued consultation with developers, the only parties with appeal rights under the provisions. This is undemocratic and denies natural justice to affected third parties. It also gives an unacceptable degree of power to developers and bureaucrats, with inadequate checks and balances against the abuse of that power'

50. Mr Delahoy

Plan: opposes North Watson development

51. Royal Australian Planning Institute (ACT Division)

Should be better coordination between ACTPA and NCPA and within ACT Government, which might have avoided Gungahlin experience of no shops, 'no coherent employment strategy and a lack of community facilities' - 'a long term strategy plan for the ACT' should be developed: 'for the first time in 30 years, Canberra is without a detailed and comprehensive strategy'

Gungahlin development is not adequate quality: it has 'densities of up to 40% above normal requirements' without adequate local open space and facilities

Legislation should contain objectives up front including 'effective agency coordination, public participation, and sustainable development' (as in recent NSW and Tasmanian legislation)

Leasehold system should be used to avoid 'speculation in relation to redevelopment'

Consultation: 'the provisions of the Act for public notification, consultation and review are unnecessarily complex, confusing and inadequate ... [and] the legislation is currently framed to place emphasis on consultation rather than participation' - 'as a minimum, the Planning Act should be amended to include the principles for consultation in the planning process'

Appeals: 'the legislation should be clearer on the extent of third party appeals at all stages of approval eg lease variations and D&S decisions' - Appeals Board should have a member who is 'a planning professional' - s152-154 of the Land Act provide for forceful search and entry and should be repealed 'and replaced with more sensible provisions governing the power of panels of inquiry into planning matters to inspect land and buildings similar to provisions elsewhere in Australia'

Environment provisions should be integrated with planning provisions: 'at present there appear to be very few links' (in the proposed integrated environmental legislation for the ACT) - appeals on environment should go to the same tribunal as planning appeals

52. Scott Brothers P/L

Concerned that 'our company has proposed two redevelopments in the last twelve months [which have not] received approval' though guidelines are met

Heritage: s59 dealing with proposed heritage listings 'should be amended to include a timeframe in which the Heritage Council must make a decision on placing an area on the Interim Heritage Places Register to prevent it becoming a tool of the [objecting] residents'

Plan: supports urban infill but notes that amenity would be increased if the current minimum size of blocks allowed for dual occupancy was to be increased from 750 square metres to 1,000 square metres. This would severely limit dual occupancies in the newer fringe suburbs. Also, 'screening of adjoining properties with mature landscape planting

[should] be mandatory ... [and] the total redevelopment of a suburb [should] be linked to that suburb's infrastructure capacity ... This could be expanded further to say a theoretical limit on how much redevelopment could occur in a suburb eg 35% of the total residential area be available for urban infill'

53. Mr Landau

Plan: opposes urban infill - favours precinct planning - considers that multi-dwelling applications are assured of success and 'it is only at the D&S time that some more rigid rules may be applied'

Appeal process (to a lease variation) is a 'farce'

54. Mr Burns

Plan: concerned about detrimental impact of dual occupancy in Banks due to 'apparent lack of planning and control in the approval process to allow these dwelling to saturate landscapes on an ad hoc basis' - the cumulative effects of dual occupancy within one area are not assessed by ACTPA, especially in Smeaton Circuit, Banks - 'Why has dual occupancy been approved in an area such as Banks which is not located near a major shopping centre ... [as set out in] the policy guidelines' of the Territory Plan?

Approvals process: requirement in Land Act that lease variation be notified to adjoining lessees has not been met in Banks - purchasers of blocks in Banks were assured by Land Development Branch that only one dwelling per block was permitted, but this untrue - ACTPA ignored objections raised to dual occupancy on a particular site - dual occupancy dwellings were offered for sale before DELP approved D&S

55. Mr Clements

Plan: concerned about specific dual occupancy proposal (14/16 Chifley) as an example of lack of regard for amenity provisions in the Plan with respect to dual occupancies

56. North Canberra Community Council

Consultation: calls for establishment of community councils to act as a point of contact with planners and other Government agencies, and with some Government funding - DELP should publish 'a community guide to all legislation currently in force' re planning and land administration - current 21 days is inadequate and should be at least 60-90 days for major developments

Legislation: there exists 'a plethora of legislation', which should 'be simplified and identifiable anomalies within the Land Act and between various Acts should be identified and rectified' - no specific legislation applies to joint ventures and such legislation should be developed

Plan 'deals primarily with the nuts and bolts of "doing" development and lacks adequate consideration of the development context' - calls for moratorium on urban infill - Monash Drive should be de-gazetted by amending the Districts Act to remove any reference to Monash Drive

Defined Land should not apply to 'any urban consolidation project'

ACTPA should be separated from land management and be a statutory authority (requiring amendments to Commonwealth legislation)

Approvals: prescribed periods should be spelt out and be consistent in all Acts - 'all approvals [whether of lease grants, lease variations, determination of betterment] ... be treated as disallowable instruments with a consistent disallowance period'

Betterment should be at 100% and the base 'should reflect the existing lease purpose of a site and not its market value' - calls for a Royal Commission into betterment

57. ACT Chamber of Commerce and Industry Limited

Betterment at 100% provides no incentive to redevelop

ACTPA utilises stopclock on trivial matters

58. Mr Butler

Plan: calls for preservation of 'the areas of Canberra developed prior to 1950' - Kingston 'has been decimated' over 20 years - redevelopment should have regard to an area's character - Housing Trust should pay particular regard to redevelopment proposals as it holds considerable housing stock

59. D and M Maloney

Plan: objection to particular redevelopment (2,3 & 4/84 Ainslie) because reduces existing amenity

60. Ainslie Residents Association

Consultation: calls for PDIC inquiry to be more widely advertised eg in circulars to community groups, and PDIC's advertisement about this inquiry 'difficult to understand'

Plan: urban consolidation is not opposed but is being 'poorly considered' in that density is excessive, developments are 'architecturally insensitive', destroy 'Ainslie's mature garden setting', insufficient 'play areas for children in the developments' and increased traffic problems

61. C Green

Plan: opposes dual occupancies due destruction of mature landscaping

62. Mr Allen

Complexity: 'I guess we are learning how the difference between the legislation, the Plan and policies and strategies'¹ - calls for public to be able to initiate draft Variations

Plan: concerned about Old Red Hill

¹ Transcript p116

Heritage Council process also of concern re Old Red Hill

63. Land and Planning Appeals Board

Legislation: - s282ZG permits Board to 'exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision': should be clarified to require 'the decision maker (delegate) to state any limitation to his/her powers as distinct from the wider powers of the Minister or the Executive' - s282ZA requires a decision maker to lodge with the Appeals Board material relevant to a decision within five working days after receiving notice of the review: should provide 'that all documents be lodged with the Board within 14 days of lodgement of the review application' - s282U is inconsistent with s276 re time to start counting the 28 days, and they should be consistent (to read 28 days from the date of the decision) - s282ZU should enable 'the Secretary of the Department to nominate persons who may be served with notices under Part VIA' - Buildings Act defines "structure" to include a fence but Board has 'an inordinate number of appeals on fencing matters, and some policy change should be considered

64. Old Red Hill Preservation Group

Heritage protection is inadequate

65. Mr Chapman

Legislation: 'The Territory Plan ... prevents the planners from exercising the normal and necessary prerogatives of planners ... by purporting to rezone virtually all residential Territory Land while at the same time limiting the discretion of the ACTPA to the role of "rubber stamping" redevelopment applications which satisfy the D&S criteria in appendix III-2 and similar criteria throughout Parts B and C to the Plan. These legislative restrictions inhibit proper planning and hand the initiative to developers to determine the shape and substance of ... Canberra ... However, many of the restrictive provisions in the Territory Plan are contrary to law and of no effect'

s51 of the Land Act states that 'the validity of a provision of the Plan shall not be questioned in legal proceedings except those commenced within three months ...' but this 'is unconscionable and contrary to public policy [and] is invalid and should be repealed'

s165(8-10) should clarify the exercise of the Executive's discretion to grant a lease so that the discretion is exercised properly

s184(b) states that where a lease variation 'would increase the market value of the lease, the lessee has paid the Executive an amount determined by the Executive as prescribed in respect of the increase in the value of the land that would result from the variation': this should be changed 'to ensure that anyone obtaining approval [of a lease variation] ... is required to pay the Executive the full amount of the assessed increase in market value of the lease which results from that change in land use' and so windfall profits to a developer are not possible. If this provision existed, then 'the incentive to attempt to build multi-units in settled single residence neighbourhoods might largely disappear'

s235(4) states that: 'If a concurring authority to which an application is referred fails to give notice to the Minister within the prescribed period the concurring authority is to be taken to have given notice to the Minister that it does not object to the approval of the application': this section should be changed to prevent the Minister having this discretion and the implied 'presumption in favour of developers' should be removed; further, this section 'makes nonsense of the provision in s230(3) that "The Minister shall not approve an application without first obtaining the concurrence of each concurring authority in respect of the controlled activity to which the application relates"

The Land Act 'does not require the Minister to consider an application to conduct a controlled activity in terms of the object of the Territory Plan nor to consider it in terms of the planning principles set out in the Territory Plan ... [but] the Act should provide for a positive obligation upon the Minister ... to consider all applications under the Act properly in terms of basic 'first principles' applied to achieve conformance with the object of the Territory Plan and the planning principles and policies expressed in the National Capital Plan'

s240(2) and s241(2) permit the Executive to ignore a concurring authority's objection to the approval of an application to conduct a controlled activity: this discretion should 'be subject to a proper consideration by the Executive of the application in terms of the Land Act and the object of the Territory Plan'

"controlled activity" definitions should be clarified

s235(2) requires the Authority to consider, in relation to a controlled activity, the "planning principles set out in the Plan" yet the performance measures in the Plan 'bear no relationship to the planning principles set out in Part A' of the Plan, as well as being 'inconsistent with relevant provisions in the National Capital Plan'

Part VI 'does not appear' to allow the Minister to delegate his powers yet DELP officers are regularly 'informing applicants of lease variation approvals "by the Minister"' which means 'those decisions are made without power'

ACT planning legislation is required to accord with the Commonwealth's Planning Act and the National Capital Plan established under that legislation but 'certain provisions of the Territory Plan relating to the rezoning of residential land (Part B1) and the "performance measures" (set out in Part B and Appendix III) ... are contrary to law, being inconsistent with the requirements of the National Plan and the object of the Territory Plan'. Further, s51 (see above) 'is a blatant attempt to oust the jurisdiction of the courts and deny natural justice to those adversely affected by defective provisions in the Territory Plan', as well as being contrary to the Commonwealth's Planning Act [s29(2)(b) requires 'decisions relating to the administration of Territory Land [to] be subject to just and timely review']

Plan's discretionary elements 'favour the proponent' eg Part B0 states "applications which meet all relevant performance measures may be exempt from the public notification and third party appeal provisions of that Part" - this contrasts to 'the careful set of general set of general [and specific] Policies set down in Appendix O of the National Plan' re a development application or lease variation - the Plan has an 'extraordinary bias in favour

of developers ... at the expense of existing residential amenity' - land use approvals should see 'the amenity issue [dealt with] first, rather than [consider] D&S issues on the assumption of approval to change of use'

66. Mr and Mrs White

Plan: infill policy results in reduction of property values

67. Motel Monaro

Suffered 'very considerable financial loss and degradation of business' due to lack of control over adjacent building development - calls for legislation to deal with this issue

68. ACT Government

See Chapter 2

69. Symphony Homes

Plan: 'The planners have surrendered the ACT to the developers in as much that the Lease and Development Conditions of each recently released estate are complex, not consistent and contain many features that have a strong (negative) impact on the level of amenity at an individual level and at a broader community level' - 'from the builders' perspective, the current method of delegation of planning responsibility to the developer, which occurs through the preparation of the Lease and Development Conditions and Integrated Development Plans, is an abject and costly failure' - setbacks are a problem - mandatory second car parking position on semi-detached blocks should not have to be built, simply a location for it should be shown on the plan - provisions re external house colours and materials are 'an unnecessary constraint' - 'block shapes are not practical for the standard of living in the ACT [eg] courtyard blocks and even some cottage blocks are simply too narrow to fit a house and a double carport/garage' - 'we object to the approval of dual occupancy developments on standard residential blocks in new suburbs already planned to include medium density units' - 'we object to a 60% increase in density on a site in Ngunnawal already zoned medium density. If medium density can be changed to something approximately high density, simply by "sitting out" the public notification period, we suggest that both the planning goals and the public notification system are irrelevant failures' - 'we object to the wowsery and inconsistent ruling about siting clothes hoists out of public view'

ACTPA provides 'unsatisfactory' service eg six months to process a dual occupancy application, three months to process an amendment to plans, one week to post a letter, and refusal to give an estimate when work will be processed - 'the requirement to resubmit plans and pay extra fees on every single minor query is a blatant income raising exercise'

Consultation: 'the public notification system is a cumbersome "catch all", hauling in the trivial along with the serious and unable to distinguish between them'

70. Housing Industry Association

Considers 'the urban planning system in the ACT is breaking down'

Plan: opposes moratorium on residential redevelopment - 'the development approval process is inordinately long' - car spaces should be permitted near the road

ACTPA: D&S areas 'are under-resourced relative to the workload'

Consultation: 'the attitude of the neighbours ... should be the only consideration where a design submitted for approval meets all other guidelines'

71. Kingston Community Action Group

Consultation in Kingston is 'ad hoc and fragmented'

Plan: amenity of Kingston residents not considered - 'is no scope to take account of the suburb-wide implications of specific developments' - 'should be a moratorium on further development pending resolution of existing problems'

72. Mr Swift

Consultation: questions 'how far the Planning Authority should go in private negotiations which in practice result in it supporting substantial departures from the Territory Plan and associated guidelines. The further it goes in this, the less point there is in subsequent public consultations'

73. Real Estate Institute of the ACT Ltd

Lease renewals of commercial leases are 'in limbo'

CHAPTER 6. FINDINGS AND RECOMMENDATIONS

6.1. In setting out its findings and recommendations, the committee has found it helpful to begin with the material contained in the Government's submission to the inquiry (outlined in Chapter 3). The committee then turns to Mr Todd's Report (see Chapter 4) and then to the matters raised by submitters and witnesses during the course of the inquiry (outlined in Chapter 5). Finally, the committee comments on some other matters.

Matters raised in the Government's submission

6.2. The Government's submission to this inquiry expressed concern that the minimum time for public consultation on a draft Variation to the Territory Plan was currently 21 days, which was often inadequate for community groups to prepare a response (see paragraph 3.1 of this report). The committee agrees with this observation. The committee heard comment that more appropriate time periods would be 35 days, 42 days, 60 days or 90 days. Taking into account the need to not unnecessarily slow the process of considering draft Variations, the committee considers that a doubling of the present period is appropriate.

6.3. The committee recommends that the minimum time for public consultation on a draft Variation to the Territory Plan be doubled from the present 21 days to 42 days.

6.4. In relation to heritage matters, the Government's submission expressed the view that listing procedures for a place of heritage significance on public land should be simplified (see paragraph 3.1 of this report). Further, the Government's submission outlined other problems with the heritage process (see paragraph 3.2 of this report). Also, the Heritage Council provided a detailed submission to the committee (see Chapter 5: sub.No. 9). The committee notes the support of Government officials for the Council's submission, which was described as essentially 'fine tuning of the heritage legislation'.¹

6.5. The committee is not so sanguine about the nature of the proposed changes, nor their cumulative effect - which would be to strengthen the role of the Heritage Council viz-a-viz other Government bodies. The committee is disturbed that some of the changes sought by the Heritage Council would have the effect of further complicating the planning process in the ACT, eg by enabling the Heritage Council to issue an order to prevent damage to an unregistered place 'if there are reasonable grounds to believe that it may have heritage significance according to the criteria'.² It is possible that the exercise of such a provision would increase community doubt and even suspicion about planning matters in the ACT, given that the Heritage Council could find at any time that any site in

¹ Transcript p462 Mr Meyer

² Submission by the Heritage Council of the ACT

the Territory could have heritage significance and hence could not be developed or altered until the investigation process is completed.

6.6. The time being taken to list a heritage site on the Heritage Register concerned a number of witnesses, including the Heritage Council itself - which commented: 'we are finding that it takes at least 18 months to get the place into the Register ... [and] we would encourage any means to streamline [the process]'.¹ The committee raised the possibility of the process being simplified were the Heritage Council's recommendation on a site (developed following public comment and in accord with prescribed criteria and procedures) to go straight to the Minister for an Executive Government decision, which then would be tabled in the Assembly and be a disallowable instrument. The Heritage Council supported this approach 'in principle'.²

6.7. The committee notes that the workings of the heritage part of the Land Act were to be reviewed after the Act had been in operation for some time and that such a review has not formally taken place. The desirability of a review was referred to by several witnesses, including the Australian Institute of Valuers and Land Economists Inc. - which voiced its concern about the possible detrimental effect of heritage listing on a person's property. The Institute called for economic criteria to be added to the existing criteria considered by the Heritage Council when examining a site for possible heritage listing. As well, the Institute expressed the view that municipal rates should be adjusted to take into account any heritage restrictions placed upon a site. The committee considers these matters should be examined in the course of a review.

6.8. The committee recommends that a committee of the Assembly review the provisions and processes of heritage legislation in the ACT with a view to clarifying and simplifying the provisions and processes wherever possible; and that the review take into account matters raised in submissions to this inquiry.

6.9. In relation to environment matters, the Government's submission to this inquiry stated there was a need to review the statutory periods for evaluation and determination of assessments and comments, together with reviewing the format used for preliminary assessments (paragraph 3.1). The committee agrees with both these matters.

6.10. The committee recommends that the statutory periods for evaluation and determination of preliminary assessments and comments be reviewed. The committee considers that the review should take every opportunity to rationalise the time periods so that they are consistent with other portions of the Land Act setting out consultation and determination periods. Further, the committee recommends that the format used for preliminary assessments (set out in Schedule 3 of the Land Act) be made more flexible to enable additional matters to be addressed in the preliminary assessment.

¹ Transcript p218 Mr Martin

² *ibid*

6.11. In relation to leasing matters, the Government's submission to this inquiry listed a number of concerns (see paragraph 3.1 of this report). The committee agrees with the Government that these matters should be the subject of legislative change. The committee particularly considers there is need to clarify matters to do with encroachments and with the procedures used to approve design and siting applications and building applications.

6.12. The committee recommends that:

- s167 of the Land Act be amended to provide that any dealings, whether by lessee or mortgagee, should be subject to approval by the Executive;
- the legislation be amended to provide that the value of improvements should be considered when the lease is terminated, surrendered or expires; and that the reference to "determination" in s174 should be changed to "termination" to make it consistent;
- the legislation be amended to permit the Minister to issue conditional or partial compliance certificates; and that the preservation of identified trees during the construction phase of a proposal be linked to the certificate of compliance;
- s180 (Transfer of land subject to building and development provision) should be reviewed;
- the legislation be amended to enable an order to be issued directing a lessee to address or rectify a situation in respect of a dirty block;
- the legislation be amended (with appropriate safeguards) to permit officers to enter onto leased land so that they can install, inspect and maintain public utilities; and
- the management objectives for a National Park and Nature Reserve in Schedule 1 be clarified.

6.13. In relation to encroachments, the committee appreciated the detail contained in the paper on this subject provided by Government officials and, given that the paper is the result of collaboration with the industry and has been the subject of considerable consultation, the committee endorses the recommendations contained in the paper.

6.14. The committee recommends:

- there is a need to include appropriate definitions of "encroachment", "major encroachment" and "minor encroachment" in the relevant legislation;
- "major" encroachments should attach to the lease;
- "minor" encroachments should be "recognised" for a nominal fee;
- where a development or redevelopment application involving an encroachment has been granted approval under the Design and Siting Act, no further application fee or controlled activity process should be required;
- substantial encroachments should be paid for by the lessee; and
- the Real Property (Unit Titles) Act 1970 [should] be amended to provide for recognition of approvals for an encroachment under the Land Act or the Design and Siting Act, such that an approved encroachment will not prevent the registration of a units plan.

6.15. The committee notes DELP's view (see paragraph 3.2) that the procedures to approve design and siting applications and to approve building applications should be

combined, in order to simplify procedures, fees and record-keeping. The committee adds the fundamental point that every opportunity should be taken to improve the standard of service to the public. The committee notes that the current practice is causing dissatisfaction, according to witnesses who appeared before the committee.

6.16. *The committee strongly recommends that urgent steps be taken to amend the legislation to combine the approvals process for handling design and siting applications, and building applications; and that the procedures used by DELP and the Planning Authority be simplified, rationalised and made widely known to the community.*

6.17. The committee notes DELP's advice about the internal review of its processes and the need for significant change to those processes. The results of the review were not known at the time the Department appeared before the committee. But the committee strongly agrees with the need to establish 'a single and comprehensive consultation process' for a single development project (paragraph 3.4 of this report). The committee notes with interest the view of Canberra business groups that there should:

be a process that parallels the NSW practice where applicants can elect to either have their development application and building application rolled into one process, or to have the application treated successively. In the ACT, it would be beneficial if D&S Applications and Building approvals could also be rolled into one or taken successively at the election of the applicant. [And] there could even be an extension to grouping lease change, D&S and building approval, if applicants can achieve sufficient assurance of success in regard to a lease change in order to justify the expense of the full design phase. We see significant potential efficiencies from such a process. The suggested pre-application process could make such integration a viable option. It would significantly save Government costs [see Chapter 5: sub.No.42].

6.18. *The committee recommends that the planning legislation, and the processes used by DELP and the Planning Authority, be amended to allow the establishment of a single and comprehensive consultation/approval process for a single development project (to include the lease variation process).*

6.19. In relation to betterment, the committee notes the paper provided by the Government (see paragraph 3.5 of this report). The committee is keenly aware of the significance of the betterment issue, reflected in the fact that numerous submissions and witnesses referred to this issue as one requiring urgent attention. The committee does not consider that it can do justice, in this report on planning legislation, to the many issues involved in betterment; also, the committee is aware that betterment is a policy issue for Government. However, in light of the depth of community concern about this issue, the committee considers that the whole issue of betterment might be an appropriate one for committee examination in the new Assembly.

6.20. The committee recommends that an appropriate committee of the new Assembly inquire into betterment in the ACT, taking into account the material contained in submissions to this inquiry.

Matters raised by the Todd Report

6.21. The committee was told by the Royal Australian Planning Institute (ACT Division) that Mr Todd 'was very critical of the way in which the defined land provision had been invoked' in the case of s22 Braddon, and that:

the Dixons, who were the residents of Torrens St at the time ... suffered very seriously ... because they had dared to raise an objection to a redevelopment proposal. It was because of the insertion of clause 7(3)(c)(ii) that they were in fact forced to withdraw their appeal to the [Administrative Appeals] Tribunal, because the Tribunal would not have had the power to hear it. It was a most inappropriate and cavalier way of invoking the use of that clause. I think Mr Todd's recommendation on that has not been acted upon by the Government and I think our recommendation was that it be withdrawn, in the very least, in [this] review of the Act; but in the short term, there needs to be more prompt action taken.¹

6.22. At another point in oral testimony, the Institute's representatives commented:

The problem with Braddon, s22, was that the Planning Authority and DELP were both extremely guilty of not recognising that the objections were not to the change in land use but to the detail of the proposal in terms of over-siting and bulk. If they [had] bothered to sit down with the residents and say, "OK, let's clarify what the areas of dispute really are and let's see how we can work out a design that resolves some of those issues, or let's go and see what are the parameters which are not negotiable", then I think the dispute would have been resolved very, very differently.

In fact, the Dixons engaged an architect to design some different building bulks which still achieved the plot ratio and the unit density that was set out under the Better Cities proposal but at the end of the day yielded a much better result which was nowhere near as big as what we have now finally got.²

6.23. The committee concurs with the view of Mr Todd that legislation should not permit the use of defined land provisions in the way they were used in s22 Braddon. Further, the committee notes Mr Todd's concern about the status of 'Development Guidelines' when incorporated into a lease variation approval (see paragraph 4.16 of this report).

6.24. The committee recommends that s7(3)(c)(ii) of the Land Act should either be removed entirely or else greatly modified to exactly specify the 'circumstances in which

¹ Transcript p247 Mr Wensing

² Transcript pp257-258 Ms Norman and Mr Wensing

persons are not entitled to apply for the review of decisions referred to' in Part VI of the Land Act.

6.25. The committee recommends that s7(3)(c)(ii) of the Land Act should be amended to make it clear that it is intended to be used only as a provision of general application and that it does not apply to prevent review of a decision as to whether a development proposal (in an established residential area) complies with Development Guidelines. Further, the committee recommends that the status of 'Development Guidelines' (when incorporated into a lease variation approval) be spelt out more thoroughly.

Matters raised by submitters and witnesses

6.26. Many submitters and witnesses expressed concern about the use of the defined land provisions additional to those dealt with by Mr Todd in his report.

6.27. The committee agrees with the observation of one witness that 'the defined land provision [clause 3(e)] fails to clearly define what is meant by defined land'.¹ The same witness noted that the defined land provision 'removes a proposal from the due processes contained within the Act'.² Similar criticism was made by many witnesses and submitters.

6.28. The committee agrees with the force of these criticisms, especially as they apply to urban infill type of development. The following comment is relevant to situations where the defined land provision is used in already settled areas:

the defined land provision mean that not only do we feel disenfranchised in terms of the whole of the variation to the Territory Plan, but we are also denied ... rights to be informed or even taken any notice of all in terms of what is going on inches beyond our back fence.³

6.29. In relation to land being developed in new or greenfields areas, the committee acknowledges the relevance of a defined land provision. However, there remains a need for the term to be defined properly in the legislation and the committee is sympathetic to the call for a new, more descriptive term being used instead of 'defined land' - such as 'development land'. The committee is not in favour of a suggestion put forward by the Planning Authority during the public hearings that 'a preliminary estate implementation plan ... [could be required from developers and made] available for public comment ... [and to] be submitted to the Minister for approval'.⁴ The committee considers this would further complicate and confuse public understanding of the planning process.

¹ Transcript pp242-3 Mr Wensing

² *ibid* p243

³ Transcript p262 Ms Smith (Watson Community association)

⁴ Transcript p428 Ms Burton (ACTPA)

6.30. The committee recommends that the legislation be amended to confine the use of 'defined land' to greenfields type of development and that consideration be given to changing the name in order to improve public understanding of the term; also, that the legislation spell out the meaning of the term. Further, the committee recommends that the Government institute procedures to enable community consultation at the conceptual stage of greenfields development.

6.31. The definition of 'environment' was raised by several submitters and the committee agrees that the legislation could usefully be amended to incorporate the widest possible meaning of this term. The committee also is sympathetic to the call for an environmental impact statement to list 'potentially non-beneficial impacts' as well as the beneficial impact, and for greater clarification of the criteria used to require the preparation of an environmental impact assessment (eg, see sub.No.6 from the Belconnen Community Council).

6.32. The committee recommends that the legislation be amended to define environment in a broad manner; further, that the legislation spell out the criteria used to require the preparation of an environmental impact assessment, and also require such statements to list the potential adverse impacts of the proposal.

6.33. The committee found no support for maintaining in the legislation the extensive inquiry panel powers which include the power of entry, search and inspection. These powers are given to a panel appointed by the Minister to inquire into a proposal 'in relation to a defined decision' [s135(1) of the Land Act, discussed further below]. The committee agrees with the Law Society that 'the search warrant power ... is using a sledge hammer to crack a nut'¹ and that:

The powers of entry, search and inspection are active powers of investigation which have the potential to infringe civil liberties. Whilst these powers can only be used with the consent of occupiers or in accordance with a warrant issued by a Magistrate, they are out of place in an inquiry process which has the task of assessing environmental impact on a scientific basis, rather than of deciding criminal issues of guilt or innocence.²

6.34. The committee recommends that the extensive inquiry panel powers currently existing in the legislation be modified to remove the reference to power of entry, search and inspection.

6.35. The definition of a "defined decision" in the Land Act illustrates a further problem with the legislation, namely, the fact that definitions of key terms occur throughout the Act and are not always clearly defined. For example, a "defined decision" is stated to be 'a decision of the Territory, the Executive, a Minister or a Territory authority about a proposal, being a proposal in relation to which a Minister is empowered under Part II, V

¹ Transcript p131 Mr Clynes

² Law Society of the ACT, submission to this inquiry [sub.No.10, p3]

or VI, an Act other than this Act or a subordinate law (a) to direct that an Assessment be made; or (b) to establish a panel to conduct an Inquiry' [s111]. The committee considers this definition is not easily comprehensible nor necessarily well expressed.

6.36. The committee was advised by the Law Society of the ACT:

- Part of the problem ... [is due to] the fact that originally when the legislation was first proposed ... there were going to be five separate pieces of legislation. What then happened is that the submission process went through and effectively they said, "Well, all we need is one Act". So they effectively put the five together, got a bigger stapler and stapled them together. That has resulted in definitions occurring throughout the document.

I think one issue is the plainer English issue and the other issue is actually making the document look a bit more comprehensible ... [by reviewing] the various linkages between the provisions and having definitions at the beginning ... so at least there is a standard set of documents that apply. I think that would go a long way towards resolving people's difficulties.¹

6.37. The committee was told by DELP that the legislation:

is very much a creature of the dynamics of the First Assembly and what we have been doing since then is trying to fix up some of the really profound linkage problems and we have ended up with a bit of a camel developed by a committee.²

6.38. The committee considers the legislation would be improved by some basic housekeeping to improve the layout of the legislation and the definition of key terms.

6.39. The committee recommends the planning legislation be reviewed to improve its layout and to better define key terms.

6.40. Further in this regard, the committee considers that the legislation should incorporate a statement of objectives, as suggested by several submitters including the Royal Australian Planning Institute (which nominated objectives like 'effective agency coordination, public participation, and sustainable development': see Chapter 5, sub.No.51). DELP advised the committee that:

Our Act does not have any objectives ... [There are] objectives for the Territory Plan but not for the Act itself ... it was a decision of the Department not to have them. However, in hindsight, it may be a good idea because the objectives give you something to fall back to when trying to work out what we are trying to find, what the Act is supposed to be doing ...

some of the concerns that the community are expressing about the legislation could very readily be addressed by [including a statement of] objectives.³

¹ Transcript p144 Mr Del Rio

² Transcript p473 Ms Haynes

³ Transcript p441 Mr Cohen and Ms Burton (ACTPA)

6.41. It seems to the committee that such a statement would sit most appropriately before s7 of the Land Act.

6.42. *The committee recommends that the Land Act be amended to include a statement of the objectives of planning legislation.*

6.43. In relation to Part IV of the Land Act dealing with environmental assessments and inquiries, the Law Society advised the committee in its submission that:

There is no description of the discretion required to be exercised by the Minister in deciding to establish a panel inquiry. This is to be contrasted with the Minister's power to order an Assessment of a proposal. In the latter case, the Minister must form the view that the Assessment is necessary on reasonable grounds having regard to the significance of the environmental impact. A panel is appointed simply where the relevant Minister "decides".

6.44. *The committee recommends that the discretion to be exercised by the Minister when appointing an inquiry panel should be spelt out.*

6.45. The committee does not express a view about the call by some submitters and witnesses for environmental impact statements to be done by 'an independent body, not the ACTPA' (see sub.No.18 by Minders of Tuggeranong Homestead).

6.46. The committee notes widespread concern by business groups about the current lack of a Government policy on renewal of leases of commercial property in the ACT as current leases expire (or even before the leases expire, reflecting the call by some submitters for provision to be made to renew leases at any time during the life of a lease). This matter raises a host of issues that go beyond the immediate focus of this inquiry. As with the betterment issue, the committee considers this issue would benefit from a wide-ranging committee inquiry in the new Assembly.

6.47. *The committee recommends that an appropriate committee of the new Assembly inquire into the issue of renewal of commercial leases in the ACT, taking into account the material contained in submissions to this inquiry.*

6.48. A further significant concern demonstrated during the course of the committee's inquiry relates to the complexity and frustration caused by amendments to design and siting approvals taking place after neighbours had been consulted and thought that matters were finalised. The Law Society of the ACT emphasised its concern on this point, as did another witness (Mr Chapman) who commented as follows:

It is very difficult for a resident to find out what the law is ... A trivial example is s247(2) of the Land Act ... [where] in the case of design and siting (but not lease purpose change) I can get an approval and then I can ask the Minister, or in fact ACTPA, ... for an amendment. So long as the amendment is not deemed ... to be

something that is going to significantly harm ... [others], he can approve it. But [s247(3) provides that although] ... the Minister shall tell the person who asks for the amendment that it has been granted, tell any concurring authority, tell the occupant or the lessee of the premises ... you do not have to tell the objectors ... [who might] live next door. ... the Act is full of that sort of bias ...

It is a real farce to have an approval and then have a substantial change which you are not even told about ...¹

6.49. The committee agrees that this section of the legislation should be clarified and that the Minister's discretion to approve minor amendments should be spelt out and he/she be provided with the appropriate criteria.

6.50. *The committee recommends that s247 of the Land Act should be clarified in order to more precisely define what is a 'minor' amendment to a design and siting approval. Also, the committee recommends that the Minister's discretion to approve minor amendments should be spelt out clearly, and that the Minister be provided with the appropriate criteria.*

6.51. The Law Society expressed concern that persons appearing before the Land and Planning Appeals Board did not have a 'right' to legal representation; rather, the Board could determine whether a person was allowed to have legal representation. The committee notes this provision was meant to facilitate the operation of a non-legal setting and processes by the Board. The committee suggests this matter be kept under review by the Government, bearing in mind this committee's view as expressed in its report on the Draft Territory Plan, namely:

The committee does not consider that the appeal board needs the power to summon witnesses, but there should be no legal representation except in special circumstances and subject to the agreement of the board. The committee considers this constraint is essential to ensure that there is no tendency for procedures to become more legalistic over time as they appear to have done in other jurisdictions.²

6.52. Another matter concerning the Land and Planning Appeals Board was raised by several submitters and witnesses. It concerns the fee charged by the Board to lodge an appeal. The committee heard arguments for and against the imposition of a fee, including the comment that the \$100 appeal fee 'is a genuine disincentive to community participation'.³ The Appeal Board expressed interest in being permitted to waive the fee 'in certain circumstances in cases of either hardship or perhaps [involving] community groups'.⁴ The committee considers this is a reasonable provision to insert in the legislation.

¹ Transcript pp295-7

² Legislative Assembly for the ACT *Draft Variation to the Territory Plan - the Draft Territory Plan* Report No.12 of the Standing Committee on Planning, Development and Infrastructure (May 1993), para 117

³ Transcript p108 Ms Ennis (Ainslie Residents Association)

⁴ Transcript p64 Dr McKenzie

6.53. The committee recommends the Land Act be amended to permit the Land and Planning Appeals Board to waive the lodgement fee for an appeal, in certain circumstances to be set out (including hardship).

6.54. Also in relation to the Land and Planning Appeals Board, the committee considers that other matters raised by the Board in its submission to this inquiry should be adopted (see Chapter 5: sub.No.63).

6.55. The committee recommends that the following sections of the Land Act relating to the Land and Planning Appeals Board be amended:

- s282ZG should be clarified to require the decision maker (delegate) to state any limitation to his/her powers as distinct from the wider powers of the Minister or the Executive;
- s282ZA should be amended to require all documents be lodged with the Board within 14 days of lodgement of the review application;
- s282U and s276 should be made consistent re the time to start counting from the date of the decision; and
- s282ZU should enable the Secretary of the Department to nominate persons who may be served with notices by the Appeals Board under Part VI of the Land Act.

6.56. The committee was told by many submitters and witnesses that lease enforcement by DELP was inadequate, and would be improved if two measures were introduced. First, that it would be improved if provision was made for automatic cancellation of leases if breaches continued beyond a specified time period. Second, that it would be improved if the lease administration function was separated from other elements of the department and the new body be required to concentrate solely upon lease administration. The committee is not disposed to recommend either of these course of action - though the committee does consider that it would be useful if details of enforcement activity were provided each year in DELP's Annual Report.

6.57. The committee recommends that details on lease enforcement activity be provided each year in DELP's Annual Report.

6.58. Another frequent complaint heard by the committee concerned the use of the "stopclock" by officials to delay the processing of applications. The committee is concerned about allegations of misuse of this procedure, such as those alleged by the Canberra Business Council Inc. in its submission [sub.No.42]:

the legislated maximum statutory periods for processing various types of applications are being treated as target periods [and] the "stopping the clock" procedure designed for incomplete applications is being used at whim by Government officers to meet target periods. Information is often sought which either has been previously supplied or has little or no relevance to current applications.

6.59. *The committee recommends that the Government review the use of the 'stopclock' procedure by officials in DELP and the Planning Authority to ensure it is used appropriately and equitably.*

6.60. The committee agrees with the Law Society of the ACT that the legislation should standardise the commencement day for calculation of prescribed time periods in the legislation - which should not be 'day zero'. The committee considers that prescribed periods should be spelt out and be consistent in all planning legislation. The committee is concerned that those having to use the planning system are finding 'the public notification system [to be] a cumbersome catch all, hauling in the trivial along with the serious and unable to distinguish between them' [see Chapter 5: sub.No.69]. The committee notes the call by several submitters for a review of the consultation provisions of the planning process.

6.61. *The committee recommends that the consultative processes of the planning legislation and planning process be urgently reviewed by a panel of Government, industry and community representatives with a view to simplifying and rationalising the consultation processes.*

6.62. Some submitters and witnesses called on the committee to recommend that the ACTPA be given statutory independence from DELP (and the Administration generally) - in effect, that the Authority be considered as a statutory authority just as the Chief Planner is accorded the status of a statutory office holder. The committee notes the anomalous position of the Chief Planner (as a statutory office holder) viz-a-viz the Secretary/Chief Executive of DELP (who is a permanent public servant). The committee also notes the fact that the staff of the Planning Authority are ACT Government public servants, rather than office-holders in a statutory authority. The committee appreciates the concern of some persons and groups in our community about the seeming subjection of the Planning Authority to DELP.

6.63. *The committee recommends that the Government investigate the feasibility of separating the ACT Planning Authority from the Department of the Environment, Land and Planning.*

6.64. Similar sorts of concern were voiced before the committee about the location of the Environment component of DELP, with some submitters and witnesses calling on the Environment component to be separated from DELP and to report to a Minister other than the Lands Minister. The committee does not make a recommendation on this matter.

6.65. Several submitters and witnesses, especially those resident in Kingston/Griffith medium density areas, called on the committee to recommend amendments to planning legislation - along with the Unit Title Act - to improve requirements relating to residential amenity of unit dwellers. Business groups also urged the committee to recommend an

overhaul of the Unit Title Act 'to bring it into line with the Land Act and the updating of similar Acts in the States'.¹

6.66. *The committee recommends that the Unit Title Act be reviewed to improve its relevance to planning issues in the ACT; and that existing legislation be amended to strengthen provisions relating to the amenity of unit dwellers.*

6.67. Several submitters and witnesses urged the committee to consider recommending that the text of joint venture agreements (between Government and private industry) be published, in order for the public to fully appreciate the commitments made by Government in such ventures. The committee agrees that public confidence in the planning process would be improved by such disclosure.

6.68. *The committee recommends that the Government publish the text of joint venture agreements (noting that there will be some commercial-in-confidence matters that should not be made public).*

6.69. The committee was concerned to learn that s225(1) of the Land Act relating to controlled activities does not require cessation of activity for which an approval has not been received - nor does the legislation provide time limits on treating requests for ex post facto approval (see Chapter 5: sub.No.8). Whilst not wishing to deny the opportunity for persons to seek such ex post facto approval, the committee does not consider such procedures should be permitted to go on interminably.

6.70. *The committee recommends that s225(1) of the Land Act relating to controlled activities be amended to require a decision on an ex post facto approval (of an unapproved activity or structure) be made within a specified time, following which that unapproved activity cease or the unapproved structure be removed.*

Matters to do with the Territory Plan

6.71. Many submitters and witnesses pointed to inadequacies in the Territory Plan, drawing special attention to tensions existing between the Plan's early sections that deal with the importance of residential amenity and the later sections dealing with 'performance measures' (especially the design and siting code for multi-dwelling developments set out in the Appendix). Witnesses for the Hunter Street Neighbourhood Group (Yarralumla) and Mr Chapman described the effect of the tensions very clearly, Mr Chapman remarking that:

in the [Plan's] introduction and Parts A, A1 and A2 of the Plan [are] a whole range of things which are amenity oriented - motherhood statements about planning. Then we get down to the operational bits and it is forgotten completely ... [effectively

¹ Submission to the inquiry by the Canberra Business Council Inc. [sub.No.42, p9]

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saying] 'Canberra is rezoned and you can do what you like so long as you fit in with Appendix 3.'¹

6.72. The committee certainly drew the conclusion from comments made to it that the 'global' or universal approach to planning contained in the Plan was not well received by many persons and groups in the community. On the last day of public hearings, the Chairman of this committee stated his position:

After listening to all the people [appearing before the committee] ... if I can summarise it in a couple of paragraphs, they believe that the Territory Plan in its application Territory wide is not working well because it applies to all of the Territory, that there has to be a focus on individual suburbs as they relate to the provision of higher densities ... There also has to be a focus on the precinct ... and the individual amenity of the resident.²

6.73. The committee was told by DELP that:

some aspects of the Plan have allowed change to occur too fast for the community to cope with ... [and that] if we had our druthers, we would probably want to make it more area specific.³

6.74. In this regard, the Chief Planner told the committee that precinct planning should be done by proponents of redevelopment, rather than by the Planning Authority.⁴

6.75. The committee's attention was particularly drawn to the effect of the Territory Plan on Banks, Ainslie and Kingston. The committee was seriously disturbed about the extent of, and the approvals process used in, dual occupancy development in parts of Banks. The Chief Planner advised the committee that:

the dual occupancies there were looked at [in the approvals process] from a point of view of housing affordability, of standards that were set in terms of setbacks, and there was I suppose a process approach rather than a total quality approach taken, and on reflection, we should move away from that, and we have.⁵

6.76. The view of DELP was perhaps more succinct: 'Apart from the Banks problem, I would be hard pressed to give any other [instance] where there has been a disaster'.⁶

6.77. The committee observes that the Planning Authority only started to consider the overall amenity of the suburb when local residents presented the Authority with colour-coded maps of Banks showing the extent of approved dual-occupancies. The committee considers the Planning Authority should consider the effect of dual occupancies and multi-

¹ Transcript p293

² Transcript p516

³ Transcript p516 Mr Townsend

⁴ Transcript p519 Mr Tomlins

⁵ Transcript p501 Mr Tomlins

⁶ Transcript p520 Mr Townsend

unit development on the overall amenity of a suburb, and not consider such applications in isolation from their wider impact.

6.78. The recommendations of Mr Lansdown in relation to dual occupancy pick up the concern of many submitters and witnesses to this inquiry that greater emphasis should be placed on the preservation of existing neighbourhood amenity than has occurred to date under the Territory Plan. In particular, Mr Lansdown's recommendation that a draft Variation to the Territory Plan be prepared prohibiting dual occupancies on single dwelling blocks in new development areas until five years after practical completion of the initial single dwelling on the block, should see an end to the type of excessive development that occurred in Banks. The committee notes that the Government has agreed to nearly all of Mr Lansdown's recommendations on dual occupancy.

6.79. In relation to Ainslie, the committee was told that:

the Territory Plan should not regard a suburb like Ainslie as being uniform, that the same rules area applicable to all houses and all areas [across Canberra.] ... There is absolutely no broad objection to dual occupancy ... It is the multi-unit developments that have come up as the prime issue ... [and] you could take quadrupling [housing density] as definitely excessive ... [In addition, there should] be a priority to maintain trees and gardens wherever possible and link any development to landscaping.¹

6.80. The committee notes that the Lansdown Report confirmed community concern about the 'global' provisions and application of the Territory Plan:

A primary problem that the Review observed was that the one overall and flexible land use policy and one design and siting code has resulted in new small scale infill and dual occupancies which, while acceptable in one area, is not acceptable in another.²

6.81. This observation led Mr Lansdown to recommend that plans be prepared for five broad 'local areas', to include special performance guidelines for dual occupancies and infill projects. The Government has agreed to act on this recommendation. The committee notes that this action picks up many of the concerns expressed in submissions to this inquiry.

6.82. In relation to the formal status and treatment of guidelines bearing on the Territory Plan (such as those recommended by Mr Lansdown), the committee refers to its recommendation contained in the report of the committee on the Draft Territory Plan, namely:

¹ Transcript p108, p11 and p 114 Ms Ennis (Ainslie Residents Association)

² *ACT Residential Redevelopment Review (Lansdown Report) Report to the Minister for the Environment, Land and Planning, November 1994 p4*

The committee recommends that the guidelines bearing on the final Territory Plan, and any further guidelines developed in the future, be disallowable instruments pursuant to the *Subordinate Laws Act 1989*.¹

6.83. The committee notes that requiring the guidelines to be tabled in the Legislative Assembly provides the opportunity for any Member to move that all or parts of the guidelines be disallowed and hence provides an opportunity for debate. The committee considers public confidence in the Territory Plan and guidelines related to the Plan will be increased if the guidelines are made disallowable instruments.

6.84. *The committee recommends that the guidelines bearing on the Territory Plan, and any further guidelines developed in the future, be disallowable instruments pursuant to the Subordinate Laws Act 1989.*

6.85. The recommendations of Mr Lansdown in relation to small scale infill in existing residential areas have largely been accepted by the Government, and the committee accepts that implementation of the recommendations will address many of the problems revealed during the course of this committee's inquiry.

6.86. In relation to Housing Trust developments, the committee notes that Mr Lansdown has recommended that:

the Trust continue to be subject to the same regulatory framework as any other developer, and that [the Trust] include community notification and consultation based upon ... five year forward plans ... showing broad changes proposed in each relevant suburb²

6.87. The committee agrees with this recommendation and applauds the latest move by the Housing Trust to plan on a local rather than global scale:

The approach to residential developments including dual and multi-unit developments should be planned on a precinct scale rather than as a universal policy leading to ad hoc development.³

6.88. In relation to the other recommendations contained in Mr Lansdown's Report, the committee notes that they nearly all reflect matters of concern to persons appearing before this committee - and that implementation of the recommendations as set out in the Government's response will ameliorate many of the problems. These matters include:

- simplifying the process of listing a place in the Heritage Register;

¹ Legislative Assembly of the ACT *Draft Variation to the Territory Plan - the Draft Territory Plan* (Report No.12 of the Standing Committee on Planning, Development and Infrastructure Recommendation 6, p20)

² *ibid* p11

³ Transcript p515, quoting from ACT Housing and Community Services Bureau *Submission to the Lansdown Inquiry* (dated 14 October 1994)

- forming locally based community advisory committees (initially in Yarralumla, Griffith, Ainslie and Turner);
- simplifying the language used in planning documents, together with the preparation of short explanatory pamphlets and maps for each district;
- regularly notifying dual occupancy and multi-unit applications in an area;
- the Authority to formally notify residents of an urban consolidation proposal;
- combining most appeal rights into one development application hearing;
- preparing a draft Variation to require public notification of all dual occupancy developments;
- strict enforcement of the conditions of a lease contract that requires maintenance of existing buildings pending redevelopment; and
- reconsideration of the betterment levy on lease changes from residential to higher residential uses.

Other Matters

6.89. The view of Government officials is that the legislation has 'some significant flaws' which 'can be pretty easily fixed by ... better drafting', and that basically the legislation is 'a fairly successful integration of a range of other pieces of legislation'.¹ Further, DELP advised the committee that:

I think our thinking and the community's thinking is very much along the same lines as to how the Land Act is operating, how it could operated better, what is missing, what is good and bad.²

6.90. DELP acknowledged that there is:

legitimate concern about the consultation process and people's perceptions that the community does not necessarily get a fair go in that process. The main problem is ... that the Authority has to be the proponent for planning variations every time. That is what the law requires. If we could find a better way of doing that, it would mean that people would see the Authority as being more independent from the process. Maybe it means developers should be the proponents of their own variations or where there

¹ Transcript p490 and p513 Mr Townsend

² Transcript p456 Mr Cook (DELP)

is some government policy some other agency might do it ... This would address the perception that the Authority is both judge and jury.¹

6.91. The committee notes the perception held by some that the Planning Authority is seen to be the agent of the proponent for some draft Variations to the Territory Plan. The committee has found no evidence for this view. Nevertheless, the committee recognises the importance of removing that perception.

6.92. *The committee recommends that the planning legislation be amended to permit draft Variations to the Territory Plan to be put forward directly by proponents and not exclusively by the ACT Planning Authority.*

6.93. During the course of the committee's inquiry, the Land and Planning Appeals Board announced its decision on an appeal lodged by the Minders of Tuggeranong Homestead in relation to the decision of the Heritage Council of the ACT:

(a) not to include the Bean Era cricket pitch in the list of essential features in the Council's citation for the Tuggeranong Homestead, and

(b) to excise from the conservation site areas of land that were included in the National Estate.²

6.94. The Land and Planning Appeals Board determined that the decision of the Heritage Council be set aside. In doing so, the Appeals Board overturned a decision of the Government, supported by the Legislative Assembly, on land use policies applying to the Tuggeranong Homestead site (see below). The Government's decision itself reflected a unanimous decision of this committee when it considered the draft Variation to the Territory Plan for the Tuggeranong Homestead site (see this committee's report No.19: *Draft Variation to the Territory Plan for Richardson Section 450 Block 1 (Tuggeranong Homestead)*, February 1994).

6.95. The committee notes that the Appeals Board's decision on the Tuggeranong Homestead site included a list of documentary evidence considered by the Board in reaching its decision. The committee is surprised that its report No.19 is not shown as having been considered by the Appeal Board.

6.96. In relation to the Appeal Board's consideration of the gazettal by the Government in March 1994 of the formal Variation to the Territory Plan (No.4) (which endorsed this committee's decision on the site), the Appeal Board comments as follows:

This Variation, which had the effect of changing the land use policy for Section 450 Block 1 Richardson to include residential and defined land as well as community

¹ Transcript p490 and p512 Mr Townsend

² Land and Planning Appeals Board *Decision on Application No.AA0014/94 Minders of Tuggeranong Homestead*, 8 November 1994 p1

facility, was the subject of a request by the Board on 15 August 1994 for further submissions.

Notwithstanding the changes in land use policy created by the Variation to the Territory Plan No.4, the Board noted that the functions of the Heritage Council of the ACT include advising on the heritage value and significance of places in accordance with s92 of the Land Act, a function which permeates all land use policies in the Territory Plan. For this reason the Board was satisfied that its findings on heritage significance, as assessed in accordance with Schedule 2 of the Land Act, are not inconsistent with the Territory Plan.¹

6.97. The committee expresses its astonishment at this decision. It is transparently obvious that the Appeal Board's decision is inconsistent with the Territory Plan as it was varied by Variation No.4. Further, the committee notes that the Government's decision on that Plan Variation was made lawfully and only after an exhaustive process of investigation by the Assembly's Standing Committee on Conservation, Heritage and the Environment, the ACT Planning Authority, this committee, and the Legislative Assembly itself. The PDIC alone held two public hearings on the draft Variation for the Tuggeranong Homestead site, heard representatives from a wider cross-section of the community than did the Land and Planning Appeals Board (when reaching its decision, based on the material contained in the Board's decision) and considered 35 submissions to its inquiry - as well taking into account the 121 submissions received by the Planning Authority on the draft Variation when first released for public comment. Members of the PDIC then debated at length in private before reaching a unanimous decision, which was endorsed by the Assembly.

6.98. This committee affirms the right and obligation of elected Members of the Assembly to make policy decisions on a matter such as the change of land use involved in the draft Variation for the Tuggeranong Homestead site. This committee does not believe the lawful decisions of the Government and the Assembly, made in accordance with all due process, should be overturned by an appeals body such as the Land and Planning Appeals Board. And, notwithstanding the material contained in the second paragraph of the above quotation from the decision of the Appeals Board, the committee is unaware of the legal basis claimed by the Board in making its decision.

6.99. The committee recommends that the Land Act be amended to clearly define and limit the powers of the Land and Planning Appeals Board.

6.100. Arising out this inquiry, the committee views sympathetically the comment by the Law Society of the ACT about the complexity of the planning process in the ACT:

The original basis upon which the Land Act was going to be introduced was this wonderful new opportunity for the ACT to be the leading jurisdiction of its type, to have an easy straight forward, easily understood system. That opportunity, in ... the Society's view, has been lost because it is very hard for anyone to find out what the

¹ *ibid* pp6-7

actual law is. We have got the Act which is fairly clear. We then have got the Plan ... [which] was going to contain all the relevant information. The Plan, however, has the concept of planning guidelines and how do they fit into the picture? But there is also the wide range of criteria by which the Minister and his/her officers can make decisions and there are also various policy documents. In our view, these should be contained in one document which is easily accessible and easily updated ... [Only] firms with the largest of resources are in a position to actually correctly determine what the law is with respect to an individual block. Now that is totally unacceptable in the ACT where we have got this wonderful opportunity to clean it up.¹

6.101. The view of the Royal Australian Planning Institute (ACT Division) is similar:

We have got roughly 300 pages of legislation. We have got 430 pages in the Territory Plan. We have got 220 pages in the National Capital Plan. We have numerous guidelines published [and] constant amendments. My view is that unless the system is changed, it will collapse. It is just huge. ... there is so much there that it is impossible for people to find their way through.²

6.102. The committee considers it is the responsibility of the Planning Authority and DELP to take every opportunity to improve their standard of service to the public. The committee considers that the Authority and DELP should aim to have suitable processes and facilities in place such as to enable any person inquiring about the nature of planning legislation pertaining to a particular portion of land, to access that information quickly and accurately. The committee notes that at the time the Department appeared before the committee, an internal review of departmental processes was underway.

6.103. The committee recommends that the Authority and DELP aim to have suitable processes and facilities in place such as to enable any person inquiring about the nature of planning legislation pertaining to a particular portion of land, to access that information quickly and accurately.

Conclusion

6.104. The committee hopes that the complexity of the planning process will be mitigated by implementing the recommendations of this report and other changes such as those outlined in the Government's response to the Lansdown Report. The committee considers it is fundamentally important to increase community confidence in the planning system by doing everything possible to make the planning process clearer and more transparent. The recommendations contained in this report reflect not only the community concern displayed in submissions and oral testimony to the committee, but the considered views of Members gained over the past three years dealing with planning matters in the Territory.

Wayne Berry MLA (Chairman) - 5 December 1994

¹ Transcript pp132-133 Mr Del Rio

² Transcript pp237-8 Mr Gilchrist

APPENDIX 1. LIST OF SUBMISSIONS

<i>Submission</i>	<i>Organisation/Individual</i>
1	Conservation Council of the South East Region & Canberra Inc.
2	Mr Raison
3	Conflict Resolution Service Inc.
4	Watson Community Association (North Watson Subcommittee)
5	Mrs M Howitt
6	Belconnen Community Council
7	Australian Institute of Valuers and Land Economists (Inc.), ACT
8	Mr & Mrs Adlam
9	Heritage Council
10	Law Society of the ACT
11	Mr & Mrs Jedryk
12	Mr & Mrs Dahlenburg
13	Mr M Henshaw
14	Miss L Davey
15	Mr Kershaw
16	Miss C Lintern
17	Mr G Kirby
18	Minders of Tuggeranong Homestead (Inc)
19	Mr Cronin

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20	Mr James
21	Mr Dunstone
22	Ms Hodgman
23	J R Dickson
24	Mr Bills
25	Mr Turner
26	Ms Perlberg
27	Mr Van Kleef
28	R Evans
29	Forrest Heritage Action Group
30	The Save-Our-City Coalition
31	Belconnen Community Council Inc.
32	J D & J M Donnelly
33	Hunter Street Neighbourhood Group
34	Watson Community Association
35	Mrs Filmalter
36	Ms Smith
37	Mr Watson
38	C & S Mckew
39	Yarralumla Residents Association (Mr Thornton)
40	Yarralumla Residents Association (Mr Clarke)
41	Mr Lamb

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- 42 Canberra Business Council Inc.
- 43 Mr Raison (Dated 4 August 1994)
- 44 Australian Institute of Valuers and Land Economists (Inc.)
- 45 National Trust of Australia (ACT)
- 46 Mr Roberts
- 47 Ms Blaik
- 48 Turner Residents Association
- 49 Mr Larson
- 50 Mr Delahoy
- 51 Royal Australian Planning Institute
- 52 Scott Brothers P/L
- 53 Mr Landau
- 54 Mr Burns
- 55 Ms Clements
- 56 North Canberra Community Council
- 57 ACT Chamber of Commerce and Industry Limited
- 58 Mr Butler
- 59 D & M Maloney
- 60 Ainslie Residents Association
- 61 C Green
- 62 Mr R Allen
- 63 Land and Planning Appeals Board

Inquiry into ACT planning legislation

64	Old Red Hill Preservation Group
65	Mr Chapman
66	Mr & Mrs White
67	Motel Monaro
68	ACT Government
69	Symphony Homes
70	Housing Industry Association (ACT Division)
71	Kingston Community Action Group
72	Mr Swift
73	Real Estate Institute of the ACT Ltd

APPENDIX 2. LIST OF WITNESSES

Wednesday 28 September 1994

Housing Industry Association Limited (ACT Division) (sub 70)

Mr L King (Chief Executive) & Mr D Maiuto

Mr J Kershaw (sub 15)

Australian Institute of Valuers and Land Economists (Inc.) - (sub 7)

Mr P Harding (Vice President)

Save Our City Coalition (sub 30) and The Conservation Council of the South East Region and Canberra Inc. (sub. 1)

Ms J Rees (President), Mr C Darlington (Director of the Conservation Council), Ms J Smith, Mr M Dunstone

Land & Planning Appeals Board (sub 63)

Dr E McKenzie (Chairperson) & Mr R Thomson (Registrar)

Dr C Watson (sub 37)

Kingston Community Action Group (sub 71)

Ms D Goodes (Coordinator), Mr & Mrs H Gilchrist, Mrs P Haldane (Members)¹

Mr B Raison (sub 2 and 43)

Ainslie Residents Association (sub 60)

Ms H Ennis (Chair)

Old Red Hill Preservation Group (sub 64 & 62)

Mr R Allen

Mr R Swift (sub 72)

The Law Society of the ACT (sub 10)

Mr R Clynes (President) and Mr A Del Rio (Co-Convenor of Planning Law Committee)

Banks Action Group (sub 54)

Mrs R Thomas & Mr T Burns

¹ In a subsequent letter dated 10 October 1994, Ms D Goodes advised the committee that: 'At the time of appearing at [the] committee's public hearings on 28 September we represented the Kingston Community Action Group. However, on 7 October we were informed that the group had been incorporated. We are not members of that incorporated group. We are now known as the Kingston Residents Association'.

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Thursday 29 September 1994

ACT Chamber of Commerce and Industry Limited (sub 54)
Mr J Louttit (President) and Mr H P Street (Counsellor)

Mr & Mrs Adlam (sub 8)

Belconnen Community Council (sub 6 & 31)
Mr K Minto (Chair of Planning Committee), Mr G Evans & Mr D van der Vliet (Secretary)

North Canberra Community Council (sub 56)
Ms J Kellett (President) & Mr I Gilmore (Secretary)

ACT Heritage Council (sub 9)
Mr E Martin (Chair) & Dr K Heffernan (Council Member)

Conflict Resolution Service Inc (sub 3)
Mr D Syme (Director)

Royal Australian Planning Institute (sub 51)
Ms B Norman (President), Mr E Wensing & Mr J Gilchrist (Corporate Members)

Watson Community Association (sub 34 & 36)
Ms D Nash & Ms J Smith

Mr & Mrs R Chapman (sub 65)

Motel Monaro (sub 67)
Mrs S Rogerson

Mr J Lamb (sub 41)

Friday 30 September 1994

Minders of Tuggeranong Homestead (Inc) (sub 18)
Mrs L Forceville (Chair), Mrs R Lamb (Deputy Chair) Mr N Jensen (Member)

Mrs H Filmater (sub 35)

Hunter Street Neighbourhood Group (sub 33)
Mr P Shirvington (Chairman), Dr S Rashleigh, Dr R Whitelaw, Mr T Mathews & Mr I Reid (Members)

Canberra Business Council Inc (sub 42)

Mr T Hedley (President BOMA), Ms Mary-Ellen Barry (Member BOMA), Mr D Dawes (Master Builders Association of the ACT), Mr J Martin (Mitchell-Gungahlin Chamber of Commerce) & Mr O Kleinig (Executive Director)

Miss C Lintern (sub 16)

Symphony Homes (sub 69)

Mr R Ellis (Managing Director), Mr Collett & Ms J Stenhouse

Mr R Butler (sub 58)

ACT Government (sub 68)

Department of Environment Land & Planning and the ACT Planning Authority: Ms M Haynes (A/g First Assistant Secretary, Land Division), Ms A Burton (Principal Planner, Social Planning Section, ACTPA), Mr P Cohen (A/g Principal Planner, Canberra Central Section, ACTPA), Mr R Cook, Mr J Meyer (A/g General Manager, Culture & Heritage, DELP), & Mr P Harrison (Senior Adviser Legislation, DELP)

Friday 21 October 1994

Kingston Community Action Group Inc.

Ms M Martin, Mr A Sinodinos, Mr M McKeown²

ACT Government (sub 68)

Department of Environment Land & Planning and the ACT Planning Authority: Mr J Townsend (Secretary and Chief Executive), Ms Moiya Haynes (A/g First Assistant Secretary, Land), Mr G Tomlins (Chief Planner)

² In a facsimile dated 14 October 1994, Ms Martin informed the committee that Ms Goodes 'was not the endorsed representative of the group'. As shown in the list of witnesses, the committee heard both groups of Kingston residents during the course of its inquiry.

APPENDIX 3 PRINCIPLES USED IN THE DEVELOPMENT OF THE LAND (PLANNING AND ENVIRONMENT) ACT 1991 (Paper provided by the Department of the Environment, Land and Planning in August 1993)

The *Land (Planning and Environment) Act 1991* (the Land Act) was passed by the Assembly on 15 December 1991 and commenced on 2 April 1992.

When the planning and leasing legislation was first released for public comment in January 1990 its form was substantially different from that which was introduced into the Assembly on 19 September 1991. It was originally intended to proceed with five pieces of legislation on:

- Planning;
- Heritage;
- Inquiries and Environmental Assessment;
- Land and Leasing; and
- Approvals and Orders.

Given their common features it was decided that much could be gained by streamlining the separate pieces of legislation into one bill.

The original draft legislation and the Land Act were developed on a number of principles and objectives.

In the first place, the *ACT (Planning and Land Management) Act 1988 (Commonwealth)* provided the legislative framework for the planning and management of land in the ACT by the Territory and the Commonwealth. That Act also established the National Capital Planning Authority (NCPA) and required the preparation of a National Capital Plan which ensures that the Territory is planned and developed in accordance with its national significance.

The Planning and Land Management Act also required the establishment of a Territory Planning Authority, with responsibility for the preparation and maintenance of a Territory Plan, the object of which was to:

- in a manner not inconsistent with the National Capital Plan, the planning and development of the Territory to provide the people of the Territory with an attractive, safe and efficient environment within which to live and work and have their recreation.

The laws relating to planning were also required by the Planning and Land Management Act to provide for:

- procedures for the making of the Territory Plan and amendments to it, which involve ascertaining and considering the views of the public;

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- public notification of any directions given to the Territory Planning Authority by the Executive;
- procedures for just and timely review, without unnecessary formality, of appropriate classes of decisions on planning, design and development of land; and
- consultation with the NCPA in relation to the Territory Plan and providing reports to the Executive on these consultations.

The ACT Executive was also vested with responsibility for the management of Territory Land by the Planning and Land Management Act and the ability to grant, dispose of, acquire, hold and administer estates in Territory Land. Such functions were to be performed in accordance with the principles:

- that new leases be granted only in accordance with procedures that are notified to the public; and
- that appropriate classes of decisions relating to the administration of Territory Land be subject to just and timely review without unnecessary formality.

Implicit in this framework were a range of broad aims which the planning and leasing system sought to achieve:

- a regime, as required by the Planning and Land Management Act which provides the people of the Territory with an attractive, safe and efficient environment, achieving a balance between economic growth, community expectations and environmental concerns;
- consistency with the National Capital Plan;
- a relationship which recognises the importance of the health and vitality of the Territory's economy, part of which recognises land as a most valuable asset;
- outcomes that are consistent with social justice objectives; and
- safeguards of existing lease rights.

Against this background, a number of objectives were developed to be used as the basis for preparing legislation that would provide an integrated planning and leasehold system:

- by which the community are able to obtain an understanding of the planning policies and leasing policies and procedures which apply to the Territory and are able to both appreciate the implications of proposed changes to those policies and, participate in processes of change and take action if it is considered that the policies are not being followed;
- which provides a timetable for the obtaining of decisions and enables approval to be given in a manner which allows any sequence of development, and permits an approval to be acted on once it has been obtained;
- that permits reasonable opportunities for entrepreneurship;

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- designed to provide appropriate appeal rights on the merits of planning and land use decisions;
- that does not encourage the growth of administrative resources but supports initiatives to encourage private sector development;
- that develops a common land use information system for use by the community;
- designed to guard against corruption; and
- the Assembly is the ultimate decision making authority in respect of planning principles.

The legislation was drafted against these objectives. In its final form the legislation brought together in the one place virtually all of the legislative provisions relating to planning and land management in the ACT. The only exception was the Heritage Objects Act which was removed from the 'combined' legislation and reconstituted as a separate Act as "heritage objects" were not considered to relate to land.

PART II - PLANNING

Part II forms a major component of the Land Act. It essentially gives effect to sections 25 and 26 of the *Australian Capital Territory (Planning and Land Management) Act 1988 (Commonwealth)* which require the Assembly to make laws to establish a Territory planning authority with the function of establishing and maintaining the Territory Plan. Section 25 provides the object of the Plan, requires it to set out policies and principles for giving effect to the Plan, and provides that it may deal with the detailed conditions for planning designing and developing the Territory.

The Assembly is also required to make laws for making and amending the Plan, for subjecting the Plan to public consultation and consultation with the National Capital Planning Authority, and for the community to be aware of any directions given to the Authority by the Executive. The laws are to include provisions for the just and timely review, "without unnecessary formality" of decisions on the planning, design and development of land.

The Planning and Land Management Act thus sets the framework for Part II. However, it should be pointed out that the object and purpose of the Territory Plan, while not being inconsistent with the National Capital Plan, is quite distinct and different from that Plan, which focuses on the national significance of Canberra.

In Part II of the Land Act, the object of the Plan is established in the same terms as in section 25 of the Commonwealth Act, being to ensure that the planning, development of the Territory provides the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation. The provisions dealing with the nature and functions of the Plan directly translate the Commonwealth requirements, extending specific requirements where necessary to give effect to the requirements that the planning process be open to public scrutiny.

Part II deals with four principal matters:

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- the nature and effect of the Plan;
- the role of the community in varying the Plan;
- the role of government in the adoption of a variation to the Plan; and
- the establishment of the Authority.

The overriding principle in Part II is that the Plan be directed towards achieving the object of the Plan. The Plan is required to set out the principles and policies for giving effect to the object and to identify land uses consistent with the object.

The Plan may also specify what activities in relation to land use are to be subject to planning control and under what circumstances, planning control decisions are not subject to review. A number of factors have to be balanced when deciding where a right to appeal, and public notification, is not to be allowed:

- the need for a reasonable degree of certainty;
- the community's right to review decisions that may adversely affect residential amenity or environmental quality. This is more so the case where administrative discretion is exercised;
- the need to provide services and facilities in a timely manner;
- the particular needs of target groups that require special community facilities; and
- where the Assembly had approved a specific proposal.

The involvement of the community in the planning process is an important aspect of Part II. The principle of public consultation is given effect by the requirement that all variations to the Plan are to be made available for public examination and that written comments by members of the community in relation to a variation are to be reported on by the Authority. Comments from the public are themselves available for inspection before submission to the Executive and the Assembly. Public notification of actions taken at each significant step also keeps the community informed.

The overall principles of openness and scrutiny to which the Land Act is subject is extended into the Plan approval process. Each draft variation to the Plan has to be examined by a committee of the Assembly, and provisions for disallowance of all or part of a variation by the Assembly as a whole. Provision is made for the Authority to revise, withdraw or defer a draft variation, and for the Executive to give the Authority directions in relation to the revision, deferral or withdrawal of a variation. Once passed by the Assembly the Plan is binding on the Territory. As such the Executive, a Minister or a Territory authority can not do any act or approve of the doing of any act that is inconsistent with the Plan. This also addresses the objective of certainty.

Part II takes a different approach to the community's involvement in the land planning process in respect of "defined land". In such areas, which would generally be used for broadacre development, it was recognised that in areas set aside for such development, the process for detailed settlement of the Plan would need to reflect that boundaries between different areas of land use are generally finalised following the commencement of urban development rather than beforehand. Without such an

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arrangement, land would have to be sold on a block by block basis. This would be difficult to administer and develop and thus special procedures were needed.

This process of "defined land" avoids uncertainty in the planning process and consequent holding costs and loss of return (eg rates) to the community from its land resource.

Community involvement is still maintained as areas of "defined land" have to be identified in the Territory Plan, which is subject to public consultation and Assembly agreement. The development of such land has to be in accordance with planning policies and principles that are set out in the Territory Plan. A subdivision plan setting out the proposed boundaries may be included but this could be subject to change until the detailed subdivision occurs. At that time, the Planning Authority then gazettes a map showing the boundaries between the different land uses, which are then incorporated into the Territory Plan.

The provisions of Part II enable the community to ascertain, and obtain an understanding of, the planning policies that apply, fulfilling an objective that was used in the development of the Land Act.

PART III - HERITAGE

Part III of the Land Act provides for the protection of ACT heritage, including Aboriginal heritage. Part III is integrated into the overall regime established by the Land Act and is thus intimately related to the planning, land and environmental assessment provisions. This recognises the significance of heritage values and seeks to identify, maintain and enhance those values which the community can attach to places of heritage significance.

Consistent with this, Part III establishes:

- a Heritage Council of up to 11 members with a wide range of expertise. The Council is responsible for identifying places of heritage value and steps that may be necessary to provide for their protection and conservation. The Council provides, as it were, arms length advice on heritage matters;
- a register system for places of heritage value is part of the Territory Plan. The public is consulted about places proposed for the register. Conditions must be specified for the conservation of the places. When a place is included in the Territory Plan it creates an obligation for the conservation of the heritage significance;
- a special approach to Aboriginal heritage. There is full consultation with relevant Aboriginal organisations, the reporting and safeguarding of unregistered places and objects, financial compensation in particular circumstances for loss or damage incurred by any person who reports the discovery of an registered aboriginal object or place and the restriction of information about the location and nature of an aboriginal place or object in appropriate circumstances. This approach evolved out of an awareness of the particular concerns raised in dealing with Aboriginal archaeological and ethnographic material;
- an integrated regulatory system using controlled activities and orders. Thus a person who wants to carry out an activity which affects the requirements for the conservation of the heritage significance of a place included in a register or interim

register is required to apply to conduct a controlled activity. An order is issued where work affecting the significance of a place is not carried out in accordance with an approval;

- decisions are appealable to the Administrative Appeals Tribunal.

Part III fulfils a number of the principles that were used in the development of the Land Act. The public is consulted about the process of including or excluding a place on the interim heritage register with appeal rights provided for persons who are not satisfied with the decision. Where an item is proposed for inclusion on the Register, the Assembly, as the ultimate body for deciding what was in the Territory Plan, makes the final decision. This enables public scrutiny of the process to be maintained.

The development of a register also provides certainty to persons wishing to carry out works that might affect the heritage significance of a place listed, or proposed to be listed. Heritage interests would be clearly set out and known in advance and thus the implications of heritage listing are understood and appreciated by the community.

By being a part of the integrated system established under the Land Act, Part III thus meets the overall requirement to ensure that the planning and development of the Territory provides the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation.

PART IV - ENVIRONMENTAL ASSESSMENTS AND INQUIRIES

Part IV of the Land Act, Environmental Assessments and Inquiries, provides for review of proposals potentially having adverse environmental impacts and as such it is a key element in achieving a balance between economic growth, community expectations and environmental concerns. This is in keeping with a key objective of the Land Act which is to provide the people of the ACT with an attractive, safe and efficient environment within which to live, work and have their recreation.

The provisions of Part IV are triggered through decisions under Parts II, V or VI of the Land Act. The definition of environmental impact is purposely broad so that all aspects (the natural, built, social and economic) of the environment are assessable.

In addition to the general aims that were used in preparing the Land Act, the development of Part IV was based on a number of key principles:

- to allow the comprehensive examination of and consultation on, proposal before decisions are made;
- to ensure that all relevant issues are taken into account in assessing a proposal; and
- to enable a single assessment or inquiry process to encompass matters initiated under different Parts of the Land Act.

Reviews were also carried out of other relevant State, Commonwealth and international legislation.

As a consequence of all these factors Part IV was developed along the following lines:

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- the definition of environmental impact should be broad so that all aspects of the environment (natural, built, social and economic) are assessable;
- assessments should be prepared by the proponent at the proponent's expense thereby reducing the use of public resources and maintaining a close link between the assessment and the proposal planning;
- a range of assessment types and Inquiry provisions should be made to accommodate the potential range of proposals to be considered with appropriate opportunities for public comment to assist in the evaluation of proposals and identify the need for further consideration of the likely environmental impact;
- feedback from the assessment process should improve the development of the proposal;
- Round Table Conference provisions should be included to allow for dispute resolution where conflicts arise from an assessment;
- the Minister responsible should be able to limit inappropriate consultants from preparing assessments;
- there should be full disclosure of all decisions and documentation except for commercial or privacy reasons with Inquiry hearings open to the public and reports on decisions made available for public inspection;
- certainty should be provided by both, producing a list of activities subject to mandatory assessment requirements (without limiting the Minister's discretion to require assessment of other activities), and establishing prescribed time limits within which action must be taken by the bureaucracy; and
- the process should be proactive with links to planning procedures enabling environmental assessments of proposals being carried out at an early stage, rather than attempting to regulate the project at the end of the planning process. Thus, a decision to either not approve a proposal, or modify the project to mitigate any environmental concerns, can be taken earlier rather than later.

As throughout the Land Act, public consultation is an integral component of the processes in Part IV. As pointed out above, inquiry hearings would normally be held in public and an opportunity would be provided for a person to make an oral or written submission. When the inquiry is completed, the Inquiry report would be tabled in the Assembly and provided to the public. The conduct of an Assessment would also involve appropriate public consultation with the Public Environment Report or Environmental Impact Statement, and such other appropriate documentation, available for public inspection and comment. A full opportunity for community involvement is thus provided in the inquiry and assessment process.

PART V - LAND ADMINISTRATION

Part V, Land Administration, is an inseparable part of the integrated and transparent planning and land management system that was established by the Land Act. It provides for the management and administration of leased land and public land.

Leased Land

Part V is essentially a consolidation and update of the numerous leasing Acts (eg *City Area Leases Act 1937*) that existed prior to the introduction of the Land Act. It also reflected the principles and objectives on which the Land Act was developed.

The intent was to establish a leasing system that was open and subject to scrutiny by the community, the Government and the Assembly. Where flexibility was provided, scrutiny and accountability was increased. For instance, the Assembly is required to pass criteria that are to be used where the direct grant of lease is made. This scrutiny was extended to the extent that such leases were initially to be tabled in the Assembly. This requirement has since been amended to provide that a list of such leases has only to be tabled.

Integration with the new planning scheme, set out under Part II, was an important objective of Part V. This was achieved in a number of ways:

- the lease purpose clause was continued as the mechanism through which the nature of development, and activities, on a parcel of land would continue to be defined;
- by ensuring that all new leases were not inconsistent with the Territory Plan. Before leases are granted, they have to be referred to the ACT Planning Authority. The Planning Authority was to then advise whether the grant of the lease was consistent with the planning policies and principles set out in the Territory Plan; and
- consulting the Planning Authority where an application to receive a lease is varied. A similar requirement exists to that where a lease is granted, thereby ensuring that the requirements of the Territory Plan, which have been agreed by the Assembly, are given effect.

The objective of the public being able to understand leasing policies was reflected in a number of provisions in Part V. This was achieved in part by using the provisions of previous leasing legislation. If they were consistent with the objectives and aims used in developing the Land Act and were necessary for the operation of the leasehold system in the Territory the provisions were retained. Thus various sections of Part V would be familiar to those who had used the previous legislation.

However, the opportunity was taken to update and simplify the law as was considered appropriate. For instance, previously there were three ways in which a lease could be varied either through the Supreme Court, by administrative action under section 72A of the *Real Property Act 1925* or through the surrender and regrant of a lease. This Part in combination with Part VI (Approvals and Orders) establishes a single process for the variation of leases. As will be explained more fully under Part VI a transparent process is established which provides that the Minister may approve a variation. By providing a common procedure for variations the process was easy for the community to understand. It also had a similar benefit for those wishing to vary their lease.

Public Land

New elements were also introduced in Part V. For instance, prior to the Land Act there was no provision for the category of "public land". In essence, "public land" is land which has aesthetic, historic, social, environmental, scientific or other special

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value for the community, be it for present or future generations. Part V identifies various categories of public land, details management objectives in respect of those categories (Schedule 1) obliges the Conservator of Wildlife to prepare a plan of management for an area of public land and specifies that an area of public land shall be managed in accordance with the management objectives and the Plan of Management. A Plan of Management is to be prepared in consultation with the public and is a disallowable instrument, which makes it subject to tabling in the Assembly. Any changes to a Plan of Management would thus have to be subject to Assembly scrutiny.

It is possible to lease and licence public land, with the exception of land categorised as wilderness, subject to the Conservator's agreement for purposes that are consistent with the objectives set out in the Plan of Management.

The tenet of accountability, including the right of review of the merits of decisions made, was given effect in Part V, where it was appropriate. Affected persons also had a right of review under the *Administrative Decisions (Judicial Review) Act 1989*. Appropriate decisions relating to the administration of Territory Land were thus subject to just and timely review. This would also ensure that the commitment to social policy objectives was satisfied.

While the Land Act established a new leasing system for Territory Land in accordance with the objectives and principles outlined above, the existing rights of lessees were safeguarded in the provisions of the *Land (Planning and Environment) (Consequential Provisions) Act 1991*. That Act provided that where a lease or licence had been granted or continued or purported to be granted under a repealed Act then that lease or licence, if it was in force when the Land Act commenced, was taken to have been granted under the Land Act. Thus the rights and obligations which existed under the lease or licence were preserved. Of course should a lessee then wish to vary the lease that would have to be done in accordance with the provisions and procedures established under the Land Act and the principles and policies set out in the Territory Plan, as it applied at the time.

PART VI - APPROVALS AND ORDERS

This Part of the Land Act sets in place common mechanisms for the control of a range of activities which are significant from a planning, environment, heritage or leasing point of view. It does this by establishing standardised procedures for reaching decisions in relation to those activities (approvals), by specifying the circumstances in which an activity can be controlled (orders) and by providing appropriate appeal rights. Part VI is thus an essential element in achieving two key elements of the land planning system that was created by the Land Act, that of establishing certainty of process and consistent procedures (thus also leading to predictable outcomes) and of providing avenues for appeals against the exercise of administrative discretion.

Approvals

Under Part VI a person is required to submit an application to conduct a "controlled activity". The "controlled activities", which enable land use activities to be controlled, are listed in Schedule 4 and include, variations to a lease, subdivision and consolidation. The application is then processed in accordance with the provisions of Part VI. Briefly, an application for a controlled activity has to be publicly notified

and forwarded to concurring authorities (as identified) and other commenting agencies or organisations as may be considered necessary. Any comments, submissions or objections are taken into account before a decision is made and such bodies or persons that were involved, are notified of the decision.

The processing of the applications has a number of features which meets the objectives of transparency, scrutiny and accountability. There is full public notification from the public being advised of an application and the decision on the application. There is also a register of applications for controlled activities and approvals of applications is kept that is generally open to inspection by the public. Persons who objected to an application and are dissatisfied with the decision can appeal the decision, as can the person who lodged the application.

The process also provides for certainty, by imposing a discipline on the bureaucracy in that a decision on an application has to be made within a prescribed time. This appears at two levels. If the prescribed time expires and no decision has been made the application is taken to have been refused and the applicant is able to apply for a review of that decision. Part VI also imposes limits on the amount of time that a concurring authority can take to process an application. In that case, if the time limit expires and the concurring authority has not given notice of its decision then it is taken that it does not object to the application.

Part VI recognises that there are circumstances in which the time limit for processing an application should be, as it were, suspended. However, once having satisfied those requirements the certainty of the process, other than where it is provided for in the legislation, cannot be suspended without the agreement of the applicant.

Certainty is also provided in the sense that the framework for the processing of an application is set out in a statutory form. That is, the public knows what is required, whom may be consulted, what can be considered, how will disputes be resolved and how long it will take to obtain a decision.

The principle of appeals against decisions is an important component of Part VI. As mentioned above applicant and objector appeal rights are provided. There are however instances where third party appeal rights are limited, as are prescribed in the Territory Plan, the Regulations to the Land Act or in such other appropriate legislation, such as the *Buildings (Design and Siting) Act 1964*. To ensure that parties exercise their appropriate appeal rights it is necessary that they be informed of their opportunities. Part VI addresses in some detail the means by which parties are notified of applications, especially those subject to third party appeal.

Orders

Part VI also provides for "orders" to be issued where a controlled activity specified in Schedules 4 and 5 and other legislative provisions is being conducted without approval or outside the terms of the approval.

As with applications to conduct a controlled activity an application for an order has to be made to the Minister and be processed within a prescribed time. If a decision is not made within a prescribed time the application is taken to have been refused and the applicant can then proceed to have that decision reviewed.

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The Minister can make an order of his or her own initiative. An application does not have to be received. Also, it is possible to apply to the Supreme Court for an injunction to be made. It is not necessary to initially apply to the Minister.

The key features of Part VI reinforce the principles and objectives used in developing the Land Act. By establishing standardised procedures a greater level of certainty and consistency is introduced into the decision making process for land use matters. Applicants will know the procedures, criteria and time limits which apply to their application.

Furthermore, Part VI creates a statutory framework which will accommodate and encourage administrative reform of approval procedures, so that the process can be simplified and streamlined. Thus the quality of the decision making will be improved. By way of example, if all interested agencies (concurring, commenting, as well as the public) are consulted when an application is being considered this will ensure that all relevant factors, including any objections, are taken into account. By ensuring that all information is before the decision-maker, the decision making is better informed.