

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

*REPORT ON WATSON SECTION 61 BLOCK 8
(FORMER STARLIGHT DRIVE-IN SITE)*

**REPORT NO.2
OF THE
STANDING COMMITTEE ON PLANNING AND ENVIRONMENT**

JUNE 1995

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

RESOLUTION OF APPOINTMENT

Extract from the Minutes of Proceedings of the Legislative Assembly
(Third Assembly), 9 March 1995:

The following general purpose standing committees be established to inquire into and report on matters referred to them by the Assembly or matters that are considered by the committee to be of concern to the community -.

(a) a Standing Committee on Planning and Environment to examine matters related to planning, land management, transport, economic development, commercial development, industrial and residential development, infrastructure and capital works, science and technology, the environment, conservation, heritage, energy and resources...

COMMITTEE MEMBERSHIP

Mr Michael Moore MLA (Chair)

Mr Wayne Berry MLA (Deputy Chair)

Ms Lucy Horodny MLA

Mr Trevor Kaine MLA

Secretary: Mr Rod Power

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

Members:

Michael Moore MLA (Chair)
Wayne Berry MLA (Deputy Chair)
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Mr Gary Humphries MLA
Minister for the Environment, Land and Planning
Legislative Assembly
CANBERRA ACT 2601

Dear Minister

I am pleased to forward the response on the Standing Committee on Planning and Environment to your request that the committee consider a redevelopment proposal for Watson Section 61 Block 8 (the former Starlight Drive-in site).

The committee adopted the response contained in this report at its meeting on 13 June 1995. As you are aware, the Legislative Assembly on 1 June 1995 resolved that the committee (if the Assembly is not sitting) may send its report to the Speaker, who is authorised to give directions for its printing and circulation. The Speaker's authorisation was obtained on 13 June 1995.

The recommendations of the Standing Committee on Planning and Environment on the Watson redevelopment proposal are shown at the end of the report.

Yours sincerely

Michael Moore
Chair

13 June 1995

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT: REPORT ON THE REDEVELOPMENT PROPOSAL FOR WATSON SECTION 61 BLOCK 8 (THE FORMER STARLIGHT DRIVE-IN SITE)

1. On 26 April 1995 the Minister for the Environment, Land and Planning, Mr Gary Humphries MLA, asked the committee to consider a redevelopment proposal for Watson Section 61 Block 8 (the former Starlight Drive-in site). The Minister's letter noted the interest of the former Standing Committee on Planning, Development and Infrastructure in the North Watson area and stated that it is 'appropriate for the [present planning] committee to be kept informed of all development proposals - including those on leased land'.

2. The committee acceded to the Minister's request and scheduled a briefing on the proposal. The briefing took the form of a public hearing and occurred on 5 May 1995. At this meeting, the following persons briefed the committee:

- for the proponent - Mr McCann (McCann & Associates) and Mr Dowling (Bryan Dowling & Associates Pty Ltd);

- an objector, Mr Dunstone (a local resident and Deputy Chair of the North Canberra Community Council); and

- for the ACT Administration: Mr Tomlins (ACT Chief Planner) and Mr Thwaite (Acting Assistant Secretary, Lease Administration, Department of the Environment, Land and Planning - DELP).

3. A second public hearing took place on 19 May 1995 when the committee took evidence from the following government officials:

- Mr Townsend (Secretary, DELP), Mr Guild (General Manager, ACT Housing; and formerly First Assistant Secretary, Land Division, DELP), Mr Thwaite and Mr Tomlins.

4. The committee was provided with a considerable amount of material at these public hearings, and subsequently. This material was authorised for publication by the committee. Because of the importance of the material made available to the committee, and because of the complexity of the matters raised, most of it has been reproduced as Attachments to this report.

5. Attachment A to this report reproduces the Minister's letter to the committee requesting it consider the redevelopment proposal. Attached to the Minister's letter is a briefing paper by the ACT Planning Authority which recommends that the committee endorse the proposed redevelopment because it complies with the relevant Design and Siting Code and is consistent with the Territory Plan.

6. Attachment B is a site plan of the proposal prepared by a consultant to the proponent. In essence, the proposal is to construct 185 residential dwellings and 145 serviced apartments together with a restaurant and function facilities. The break up of the residential units would be 33 two bedroom apartments, 108 two bedroom apartments and 44 one bedroom apartments. These would be grouped around a central open space containing a pool, two tennis courts and playground facilities. Access to the residential units would be via Aspinall Street and access to the serviced apartments would be from the Federal Highway. The serviced apartment would consist of 108 two bedroom units and 44 one bedroom units. These units are aimed at the tourist market.

7. Attachment C is a chronology of matters pertaining to the lease administration of the site from January 1987 to May 1995. The left hand side of each page of the

chronology (comprising the first 5 columns) was prepared by Mr Dunstone and presented to the committee at its public hearing on 5 May 1995. Mr Dunstone advised the committee that he had compiled the chronology from departmental responses to his Freedom of Information requests. In reproducing the chronology, the committee in no way endorses it or comments on its comprehensiveness; also, the committee notes that a number of the items in the chronology precede self-government and thus were the responsibility of the (then) Commonwealth administration.

8. Mr Dunstone's material shows a lengthy history of discussions about the worth of the site and about the uses that might be made of it. Mr Dunstone's own view of the material is that it shows the developer has made many 'attempts to gain additional development rights and waivers of development conditions' and that the relevant government bodies displayed a 'pattern of not enforcing the public lessor's rights', particularly in terms of obtaining the maximum financial return to the Territory.

9. The ACT department responsible for lease administration is the Department of the Environment, Land and Planning (DELP), which advised the committee that Mr Dunstone's chronology was misleading and superficial. DELP responded in detail to the items contained in the chronology by adding a further column to Mr Dunstone's original document, and this is shown on the right hand side of the pages in Attachment C (the sixth column). The Department's response shows the difficulties of lease administration on a site such as the former Drive-in, and raises (among other things) the following issues:

- uncertainty in earlier years about whether 'market value' or 'full added value' should be used in determining the worth of the site (and hence the amount of betterment payable on any change of lease)

- the capacity of a lease holder in the ACT to unreasonably prolong action on any non-observance of lease conditions, by submitting revised development proposals requiring changes to the original lease conditions
- that in the past, a great deal of discretion was given to departmental officers to interpret lease legislation and lease policy
- the inter-relationship of planning policy and leasing policy, and hence the difficulty for officials in providing advice on a possible change of lease conditions before changes to land use are finalised
- the difficulty for government officials in ensuring that serviced apartments remain in use in the future only as short-stay tourist accommodation and are not used or sold as long term residential dwellings
- the error that apparently permitted the Drive-in to continue to operate when lease conditions no longer allowed it, and that did not accurately record the change in the Block number from Block 5 to Block 8 when the access to Aspinall Street was added to the whole site.

10. The Department separately responded to some specific points raised by Mr Dunstone. The Department's response is shown in Attachment D. This advice raises, among other matters:

- the variability (to say the least) of valuations provided by the Australian Valuation Office (AVO)
- the problems associated with the Department's 'long standing practice' to take no action on breaches of a lease where 'negotiations are being conducted with a lessee for the redevelopment of a property'.

11. The response by Mr Dunstone to the Department's comments is shown in Attachment E. Mr Dunstone contends (amongst other things):

- a distinction should be drawn between a lease variation and a lease surrender, and the circumstances in which either action is appropriate should be clearly spelt out
- the difference in revenue to the Territory between a lease variation and a lease surrender was considerable in the Drive-in case, and this may be presumed to be true of other cases
- the importance of the Department clearly outlining the full nature of lease requirements when requesting a valuation from the AVO. If the Department's instructions do not reflect all of the circumstances affecting the lease, then the AVO valuation may be very different to what it should be
- the enforcement of lease condition should not be delayed to the point where the original requirements are no longer relevant
- the Department may be uncertain about what betterment, if any, to apply if and when the lease of this site is varied to permit the proposed mix of residential and tourist apartments
- the Department had ignored recommendations arising out of the detailed examination of Canberra's leasehold system conducted by the House of Representatives Standing Committee on Transport, Communications and Infrastructure *Report on the Canberra Leasehold System* (November 1988).

12. In the course of its inquiry, the committee received correspondence from two people who have purchased residential units in the proposed redevelopment. These people stated that they have 'bought units in which we intend to live 'off the plan', paid our deposits and signed contracts of sale in good faith, believing that sufficient planning approval must have been obtained for the units to have been offered for

sale'. The correspondence continued: 'Our deposits are tied up until a decision is made on whether to go ahead with building this development... [and] it is curious that the ACT Government... has accepted Stamp Duty in relation to the purchase of the units and is still withholding planning and building approval for the proposal'.

13. Also while considering the Watson proposal, the committee was asked by the Government to consider the draft Variation to the Territory Plan for the Yowani Golf Club at Lyneham (Section 67 Block 1 part). This draft Variation also raised planning and leasing issues.

14. In relation to the latter, the committee queried DELP about the amount of betterment payable on the lease variation and was told, in the first instance, that the appropriate remission rate was 50 percent. Subsequent advice from the Department was that a remission rate of 20 percent was applicable. The difference in income to the Territory between these two proportions is about \$1.5million. Understandably, the committee was concerned about such variations in advice from the Department.

15. It is even not clear to the committee that the matter ends here. The revised figure of 20 percent provided by the Department was based on an assumption by the Government Solicitor [which provided the basis for the advice] that no other 'relevant change' was made to the lease when it was renegotiated in June 1987. The committee understands that there was in fact a further change made to the lease at that time. The committee has written to the Minister to request his agreement to this matter being clarified and, if indeed the lease was varied in other ways, that a further legal opinion be sought about its effect on calculation of betterment.

16. The committee notes that there has been some recent comment that the issue may simply boil down to a dispute about differing legal opinions. The committee does not see the issue so simply.

17. The fact that major redevelopment projects in the ACT have generated such uncertainty about their appropriate betterment charge is itself an indictment on the present lease administration system. Obviously, neither the responsible department nor developers can be confident of the present system; **but neither can the ACT community.**

18. At this stage, the committee does not express a view whether the problem lies essentially in the terminology of present legislation or whether the problem lies in a culture of administrative action over time. Perhaps the problem lies in both areas.

19. The committee's examination of the Yowani and Watson matters raises doubts about whether the system of lease administration is being handled in a way that maximises the return to the Territory's public revenue, along with generating public (and investor) confidence in the system being administered equitably and carefully.

20. The committee therefore has called upon the Government to institute an inquiry under the *Inquiries Act* into the administration of ACT leasehold with particular reference to the assessment and collection of the appropriate charges arising from betterment. The committee's letter to the Minister containing this recommendation is reproduced in Attachment F.

21. The reason that the committee suggested an inquiry under the *Inquiries Act* is that it distances the matters under investigation from the political process and also enables the matter to be examined by people with specialist expertise. In this regard, the committee has suggested that the inquiry would best be conducted by three persons with (respectively) legal expertise, auditing/accountancy expertise and leasing knowledge.

22. The committee is pleased that the Government has agreed to establish such an inquiry.

23. In relation to the planning issues associated with the specific matter now before the committee, the committee acknowledges the advice from the Chief Planner that the redevelopment proposal complies with the Territory Plan and with relevant Design and Siting requirements. The committee notes the architect's claims about the effort made to maximise solar orientation and to handle stormwater run-off in an innovative way.

24. The committee remains concerned about the possibility that some of the serviced apartments could be sold over time for residential dwellings, which would increase the number of residential dwellings permitted in the North Watson area and act to the detriment of proposals put forward in the future by other lease holders in the area. The committee notes Departmental advice on this point, that it is very difficult to enforce the use of serviced apartments for only short-stay uses.

25. The committee considers that the lease arrangements for the site should clearly deal with this problem and the committee recommends:

- **that the Government ensure appropriate lease conditions (and other arrangements) are in place to ensure that the serviced apartments are not sold or used for long-term residential use.**

26. In relation to the fact that people have purchased residential dwellings 'off the plan' and have paid Stamp Duty to the Territory administration for such purchase, the committee recommends:

- **that the Government, and in particular the Minister for Consumer Affairs, investigate the sale of residential dwellings ‘off the plan’ before all relevant development conditions have been met (including approval of the lease variation) and ensure that legislative and administrative arrangements are in place to protect the interests of purchasers.**

27. The committee notes that the lessee of this site has had a number of approvals for variations to the lease over several years. In each case the lessee has failed to meet the conditions of the lease (or contract). If this change of lease is approved, the committee is concerned that yet a further breach of contract could occur and the matter could continue indefinitely.

28. The committee notes that in 1987 in his report commissioned by the Joint Parliamentary Committee on the ACT, Professor Max Neutze drew attention to this lease as being an example of a lease which had been badly handled by the (pre-self government) lease administration. In 1995, the management of the lease continues to attract criticism. Perhaps one of the reasons that problems still exist is the reluctance of lease administration to change its approach.

29. The committee is further concerned that although the Starlight Drive-in lease was purchased for \$1.75million in 1987 and a betterment amount of \$645,000 has been paid, the community may not have received the appropriate full value of the lease. The committee considers that this lease could well be a prime candidate for withdrawal and resale were it not for the failure of the Department to pursue the lessee.

30. The committee recommends:

- **that the Minister defer consideration of varying the lease for Watson Section 61 Block 8 until such time as the Inquiry into the Leasehold System is completed, or until such time as that Inquiry has advised the Minister on this specific lease, in order for the Minister to properly determine:**
 - **what is the appropriate level of betterment to be paid to the Territory**
 - **what is the appropriate process to be followed by the Department**
 - **what is the method of ensuring that the lessee will not continue his former practice of breaching lease contracts.**

Michael Moore MLA

Chair

13 June 1995

ATTACHMENTS

Attachment A - Letter (dated 26 April 1995) to the Chair from the Minister for the Environment, Land and Planning (Mr Gary Humphries MLA) requesting that the committee consider a redevelopment proposal for Watson Section 61 Block 8 (the former Starlight Drive-in site).

Attachment B - Site plan of the proposed redevelopment, prepared for the proponent by Bryan R Dowling & Associates Pty.Ltd.

Attachment C - Document entitled 'Chronology of events for the Starlight Drive Lease' which contains (on the left side of the page) material presented by Mr Dunstone to the committee on 5 May 1995 and (on the right hand side of the page) the response by DELP

Attachment D - Correspondence to the Chair from the Secretary of DELP (dated 18 May 1995) responding to particular points made by Mr Dunstone

Attachment E - Correspondence (dated 25 May 1995) to the Chair from Mr Dunstone responding to DELP's material

Attachment F - Letter (with attachments) from the Chair of the committee (dated 2 June 1995) to Mr Gary Humphries MLA (Minister for the Environment, Land and Planning) conveying the committee's call for an inquiry under the *Inquiries Act* into the administration of ACT leasehold with particular reference to the assessment and collection of the appropriate charges arising from betterment