

Australian Capital Territory
Legislative Assembly

Standing Committee on Public Accounts
Review of Auditor General Report 2/2005

Supplementary submission by
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Section 1: Updated chronology

1. This supplementary submission is made in response to an invitation by the Committee to provide an update to the circumstances surrounding an extension to our property at Block 10 Section 36 (39 Anzac Park) Reid.
2. The following section describes the chronology of the development since the previous submission.
3. The chronology is to allow the Committee to understand the events as they occurred. Following the chronology, we provide additional material in relation.

Chronology

4. 24 May 05. AAT agreed to the appeal.
5. 01 Jun 05. ACTPLA request AAT to invite Reid Residents Association to be a party joined in the appeal.
6. 03 Jun 05. Power's object to RRA being a party joined.
7. 10 Jun 05. RRA apply to AAT to be a party joined.
8. 13 Jun 05. Power's object to RRA being a party joined.
9. 14 Jun 05. AAT approve RRA as a party joined. AAT authorise the summons of RRA documents.
10. 18 Jul 05. ACTPLA witness material provided by ACT Government Solicitor
11. 19 Jul 05. ACT Government Solicitor seeks permission for witnesses who lodged evidence on 18 Jul 05 to attend site to inspect property.
12. 22 Jul 05. Power's inform ACT Government Solicitor access to the property not required due to evidence lodged on 18 Jul 05.
13. 22 Jul 05. ACT Government Solicitor provides notice of intent to seek ruling by AAT on a legal point.
14. 22 Jul 05. ACT Government Solicitor seeks access to a Small Claims Court file.
15. 26 Jul 05. Power's seek clarification from AAT about access to small claims court matter. Response not provided.
16. 27 Jul 05. AAT authorise access to small claims court file.
17. 31 Jul 05. RRA seek leave of AAT to dismiss the appeal.
18. 16 – 17 Aug 05. AAT hearing. ACT Government engage consultant barrister (Mr. P. Walker) to act as Counsel for ACTPLA.
19. 17 Aug 05. AAT rejects appeal, substituting decision made against wrong section of Land Act (for second time in this matter) with a decision to refuse amendment under Section 247.
20. 23 Aug 05. Power's write to AAT requesting application of slip rule to incorrect decision.
21. 23 Aug 05. AAT reject Power's application of slip rule.
22. 26 Aug 05. Power's seek application of Section 180 of Legislation Act on basis the AAT had made an error of law by ruling in the matter.
23. 2 Sep 05. AAT acknowledge that if information provided on 26 Aug 05 was accepted, no amended DA was necessary. AAT also acknowledge that their ruling is invalid because it was an unnecessary amendment. AAT refuse to re-open the appeal and correct the record.
24. 17 Oct 05. ACTPLA issue a Notice of Prohibition precluding the re-rendering of the property (expiry date 16/12/05).
25. 17 Oct 05. Power's provide ACTPLA with copy of AAT correspondence (26/8/05 and 2/9/05).

Chronology

26. 21 Oct 05. ACTPLA (Neil Savery) writes to Power's rejecting interpretation of AAT letter and requests additional information be provided (if we have any).
27. 9 Nov 05. Power's write to ACTPLA (Neil Savery) with extensive evidence of highly inappropriate behaviour by ACTPLA and Heritage Unit officials (the officials involved in the matter from day one).
28. 22 Nov 05. Simon Corbell provides a response to a Question on Notice in the ACT Legislative Assembly that in the period 2003, 2004 and 2005, a total of 13,795 Certificates of Occupancy and Use has been issued in the ACT, of which 13,421 (or 97.3%) had been issued under the same section of the Building Act as that issued to the Power's on 12 Nov 03.
29. 6 Dec 05. Environmental Protection Authority (EPA) write to Power's asking their involvement in an investigation into a breach of Section 74 of the *Heritage Act 2004*.
30. 8 Dec 05. ACTPLA (Neil Savery) writes to Power's advising the letter of 9 Nov 05 "though detailed and exhaustive in content fails to address the issue of relevance..." and indicates Power's not to write to ACTPLA again, but write to the ACT Government Solicitor.
31. 9 Dec 05. Power's write to EPA seeking clarification as to the terms of reference of their investigation and other relevant details before a response to their request can be provided.
32. 12 Dec 05. EPA provide a partial response to the questions raised by Power's on 9 Dec 05.
33. 15 Dec 05. ACTPLA issue a further Notice of Prohibition precluding the re-rending of the property (expiry date 13/02/06).
34. 23 Dec 05. Power's seek further clarification of investigation by the EPA, and seek evidence of the nominated investigating officers Instrument of Appointment (Note: no response was ever provided to this request).
35. 4 Jan 06. Power's write to ACTPLA (Neil Savery) disagreeing with his response of 8 Dec 05. Also advise Dr. Blair observed inspecting the property on the afternoon of 3 Jan 06.
36. 5 Jan 06. Ms. Rosemary Willet of Heritage Unit inspected the property.
37. 6 Jan 06. Power's advise ACTPLA (Neil Savery) stating increased interest in property inappropriate and harassment.
38. 13 Feb 06. Notice of Prohibition issued on 15 Dec 05 expires.
39. 23 Mar 06. Power's commence rendering house.
40. 23 Mar 06. ACTPLA (Compliance unit) issue Notice of Prohibition demanding rendering of property cease. Power's video tape issue of Notice.
41. 23 Mar 06. Power's write to ACTPLA (Neil Savery) outlining eight grounds why the Notice of Prohibition was invalid. Power's advise rendering to continue.
42. 24 Mar 06. ACTPLA (Compliance unit) issue further Notice of Prohibition demanding rendering of property cease. Renderers scared off the site when they were threatened with a \$50,000 fine if they continue work.
43. 25 Mar 06. Power's advise ACTPLA (Compliance Unit) notice is also invalid and return the Notice.
44. 29 Mar 06. Power's write to Planning Minister about circumstances.
45. Apr 06. Rendering of house completed.
46. 13 Apr 06. ACTPLA issue Mark Power with two summons' to answer criminal charges in relation to undertaking a development without approval (removed render) and ignoring a Notice of Prohibition.
47. 13 Apr 06. M. Power obtains Statement of Fact for Prosecution from DPP which excluded critical material.
48. 17 Apr 06. M. Power makes written representations to DPP (Mr. R. Refshauge SC).
49. 4 May 06. Power's meet with DDP personally to discuss representations.

Chronology

50. 11 May 06. Simon Corbell responds to Power's letter of 29 Mar 06 stating inappropriate to comment given matter before courts.
51. 18 May 06. M. Power appears in Magistrate's Court. DPP seek an adjournment.
52. 19 May 06. M. Power provides supplementary information to the DPP.
53. 2 Jun 06. M. Power appears in Magistrate's Court. DPP seek a further adjournment.
54. 20 Jun 06. Power's meet with DPP (Mr. R. Refshauge SC) to discuss matter. Meeting lasts 2 ½ hours.
55. 22 Jun 06. DPP advises M. Power he will not offer any evidence to Magistrate's Court (NETO).
56. 23 Jun 06. Chief Magistrate dismisses charges and M. Power is awarded costs.
57. 11 Jul 06. DPP pays costs.
58. 12 Jul 06. ACTPLA (Neil Savery) writes to M. Power advising they have no intention of commencing further enforcement action, but claims four unapproved works on the property (including masonry wall ACTPLA claimed to be 'unapprovable'). ACTPLA advise a 'compliance flag' had been placed on the building file of Block 10 Section 36 Reid so that 'Should you wish to sell your block at some time in the future, the conveyancing enquiries will show that there are unapproved works shown in the Authority's records'. Letter also advises any complaint will be required to be investigated.
59. 19 Jul 06. M. Power visits BEPCON to seek access to Building File. BEPCON were unable to locate the file (subsequently found at Dickson Office in Building Section).
60. 21 Jul 06. M. Power writes to ACTPLA (Neil Savery) advising claims in his letter of 12 Jul 06 were wrong. M. Power pointed out masonry wall that was 'unapprovable' was approved for construction on 4 April 2003, and the plans were on the building file for Block 10 Section 36 Reid. M. Power sought an apology, the removal of the 'compliance flag' and to be left alone.
61. As at the date of this submission (21 August 2006), there has been no response from Mr. Savery.

Section 2: Analysis of actions

Issues

The AAT process

62. ACTPLA initially approved an unnecessary amendment to a completed works with conditions inconsistent with advice provided on five occasions in writing over a three month period.
63. The first AAT hearing (AAT 04/43) arrived at a position that ACTPLA was directed to review its decision in accordance with the correct section of the *Land (Planning and Environment) Act 1991*. Our case was the third such error made by ACTPLA in a 14 month period.
64. After hearing nothing for six months, Mark Power wrote to the AAT advising them ACTPLA had ignored the direction it had given. The AAT wrote back to Mark Power indicating the 'Tribunal does not have the power to enforce compliance with a decision made by it'. This raises the very serious question, if the AAT cannot force compliance, why does it exist?
65. ACTPLA ignored the direction of the AAT for a further two and a half months, making it 8 ½ months to arrive at a decision which was to refuse the unnecessary amendment the day before the *Heritage Act 2004* was fully enacted.
66. When the Power's lodged a second appeal (AAT 05/40) ACTPLA withheld critical documents from the AAT when preparing the T-documents. This was only discovered by Mark Power when he sought access to documents held by ACTPLA and the Heritage Unit using the Freedom of Information Act.
67. In matter AAT 05/40, faced with extensively researched material presented by a person who chose to self represent, ACTPLA sought the services of a consultant barrister to counter a claimed minor amendment.
68. The AAT allowed a local residents association which had inaccurate records of its membership and had not sought the views of its membership to join proceedings against us.
69. The AAT did not proceed to hearing. Rather, the consultant Barrister mounted a legal argument to stop the hearing proceeding. The AAT accepted the arguments of the Barrister: we did not get a hearing. After the decision of the AAT, Mark Power wrote to the President of the AAT and pointed out he had made an error of law, the error was to make a decision at all. When this was pointed out to the AAT, the response was to acknowledge we were probably right, indicate the AAT decision was effectively rendered meaningless, but refused to correct the record.
70. At present the AAT decision currently published on the internet is incomplete and wrong. The President of the AAT has refused to correct the record, and a decision that is wrong is free to be quoted as a precedent in future cases.
71. While the Auditor General concludes the AAT process is fair, our experience suggests otherwise.
 - ACTPLA withheld material from the T documents, without consequence.
 - ACTPLA engaged a consultant barrister to fight minor amendment.
 - The AAT indicated it cannot force compliance with a direction it gives.
 - The AAT allowed a community group with inaccurate records and a group that had not sought the views of their membership to join proceedings without checking the veracity of their claims or their representations.
72. We have drawn the conclusion that the success of ACTPLA at the AAT is a reflection of the funds they direct to matters rather than the AAT being a fair place.
73. The AAT is not a people's tribunal where individuals can easily self represent. While this may have been its original intent, our experience indicates it is now a full court system, and lawyers are in control.
74. A copy of the letter from the AAT where they indicate they do not have authority to enforce compliance with a direction they give is at **Annexure A**.
75. A copy of the letter to the President of the AAT and their response is at **Annexure B**.

Issues

The EPA investigation

76. In December 2005 we were advised of an investigation to be undertaken by the EPA of an alleged breach of the *Heritage Act 2004*. The EPA sought our involvement in the investigation. In responding to the EPA request we sought details of the alleged breach, details of the terms of reference of the investigation, and information relating to how the EPA became aware of the alleged breach.
77. The response provided by the EPA contained inaccurate information about our house. Specifically, the EPA made reference to building elements that had never existed on the house in the period we had been the owners. Their reference was to building elements changed in the early 1970's. Of interest, these same errors had been made by an architect engaged by the Heritage Unit to provide evidence against us in matters AAT 04/43 and AAT 05/40. However, as previously stated, we were never given the opportunity to highlight the many errors made by the architect at the AAT.
78. The EPA claimed they had instigated the investigation, yet by some bizarre coincidence, their claims of the changes to our house that had caused detriment to a heritage place or object matched erroneous claims made over 18 months earlier by an architect engaged by the Heritage Unit.
79. We concluded the initial response provided by the EPA investigating officer contained false statements.
80. After the initial response, we sought further clarification about the investigation and sought specific details of the investigating officer's authorisation to undertake the investigation. We held concerns that an EPA officer would not have the technical skills to investigate a heritage matter. We asked to see a copy of the Instrument of Appointment for the officer.
81. Having asked for a copy of the Instrument of Appointment on 23 December 2005, no information was produced, and no further correspondence was ever received from the EPA.
82. We hold concerns about the involvement of the EPA in this matter. These concerns include:
- The EPA investigation was notified just 27 days after ACTPLA (Neil Savery) was provided a very extensive summary of the preceding two years events, including details of highly questionable behaviour of senior public servants.
 - The EPA claimed to have instigated the investigation themselves, but the reference to some of the works for which they held concerns had been made in the 1970's. Their claims matched the same erroneous claims made by the architect engaged by the Heritage Unit.
 - When challenged to produce the authority for the investigation, the EPA never responded.
 - We wonder how an officer normally responsible for investigating pollution spills and contamination issues would have the skills or knowledge to investigate a heritage matter.
 - Was it just coincidence that the EPA live in the same building and same level as the Heritage Unit?
83. We believe the involvement of the EPA was orchestrated and the motivation was questionable.
84. Copies of the correspondence with the EPA are at **Annexure C**.
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Issues

The use of Notices of Prohibition issued under Section 260 of the *Land (Planning and Environment) Act 1991*

85. With the exception of the Notices of prohibition issued by ACTPLA in March 2006, we were issued with a total of three notices which precluded us undertaking works for a total of 180 days over a 2 year period. We complied with each of these notices.
86. After each notice expired, ACTPLA failed to provide any justification for the action undertaken, and failed to indicate any further compliance action.
87. Further, our investigation into the legislation surrounding the issue of a Notice indicates in each case, the Notice was inconsistent with the requirements of the *Land (Planning and Environment) Act 1991*. A Notice of Prohibition is issued under Section 260 of the Act, and can only be issued
'to prevent or lessen a significant threat or likelihood of irreversible damage to a thing because of the conduct, or likely conduct, of a controlled activity'.
88. The act of repairing render on a wall does not fall into the above category, yet ACTPLA inflicted 180 days of unnecessary delay using a lawful authority unlawfully.
89. On the first occasion a Notice was issued, we chose to invoke our rights and sought a review of the notice by ACTPLA. ACTPLA never responded to our request for a review.
90. When subsequent Notices were issued, we advised ACTPLA of the invalidity of the document. On each occasion, ACTPLA's response was not to respond to our correspondence.

The failure of ACTPLA and Heritage to investigate claims

91. Throughout this saga, there are many examples of matters not being investigated by ACTPLA or Heritage Unit.
 92. In March and April 2005, we held five hours of meetings with Mr. Neil Savery to attempt to resolve the matter. Our meetings involved accusations backed by appropriate evidence. When questioned on 24 May 2005 by the Select Committee on Estimates about investigating our complaints raised with Mr. Savery on 17 March 2005 (that included the associated evidence), his comments were:
"I was concerned enough to take the issues up in an informal capacity with the officers responsible, who have denied the claims that have been made"
 93. More critical was the apparent lack of investigation by Mr. Neil Savery into material presented to him in writing on 9 November 2005. To the detailed disclosure of highly questionable behaviour sustained over nearly three years, Mr. Savery simply stated the material "though detailed and exhaustive in content fails to address the issue of relevance..."
 94. My letter of 9 November 2005 was a public interest disclosure. While it did not use the form of words "public interest disclosure", Mr. Savery should have recognised it for being such a disclosure. Rather than act in accordance with the requirements of the *Public Interest Disclosure Act 1994*, Mr. Savery simply indicated he sent the letter to the Government Solicitor. We are unaware of any investigation ever being taken.
 95. Claims of alleged non-compliant work on our property were made as early as February 2004 by the Heritage Unit. Based on material provided under FOI, there is no evidence of any of the claims made was investigated, rather, they were accepted without question, even though some claims made by a neighbour included photographs taken while appearing to be engaged in trespass. The Heritage Unit simply repeated the uninvestigated claims made by the neighbour, claims passed to ACTPLA.
 96. The Heritage Unit allegedly undertook an investigation of serious accusations relating to intimidation and harassment. To these claims, the complete investigation produced nothing more than 4 ½ lines of analysis and report, a report that was a file note.
 97. Our conclusion is that when ACTPLA or Heritage Unit has been found to have acted inappropriately, rather than address the issue, they choose to 'go silent' and not respond.
 98. A copy of the investigation report produced by Heritage is at **Annexure D**.
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Issues

The laying of criminal charges

99. Having complied with 120 days of consecutive invalid Notices of Prohibition, and when no restrictions existed, we commenced replacing the render on our property to protect the lime rich mortar, and to complete the repairs in accordance with the advice provided by the Heritage Council.
 100. On the first day of rendering, ACTPLA officials visited our property and issued a Notice of Prohibition. The issuing of the document was video taped by Mark Power.
 101. Mark Power wrote to Neil Savery the day the Notice was issued and faxed the document to ACTPLA. The letter outlined eight reasons why the notice was invalid. ACTPLA never responded to the letter.
 102. The renderer continued working. The next day ACTPLA again came to the property, threatened the renderer with a \$50,000.00 fine if they did not stop work, and issued a further Notice of Prohibition to Mark Power. Mark Power returned the Notice to ACTPLA indicating it was invalid.
 103. Rendering was completed: it needed to be to protect the high lime content mortar that had been exposed to the elements for over 2 years and to ensure the works that were partially complete would remain effective through the 2006 winter.
 104. ACTPLA visited Mark Power **AT HIS WORK PLACE** and issued summons relating to two criminal charges on 13 April 2006. Mark Power was to appear as an accused criminal in the ACT Magistrates Court on the 18 May 2006 for the act of repairing his home.
 105. The act of laying criminal charges in this matter was vexatious. Importantly, the charges as laid were very narrow, and the briefing provided to the DPP was suspicious in what had been excluded.
 106. The chronology contained in the brief relating to a charge of removing render without approval 'stopped' on 21 Oct 05 with the letter to Mark Power from Neil Savery, even though there was relevant correspondence after this date, and even though the summons was served in April 2006.
 107. The brief excluded many important details, but most critically, the letter from Mark Power to Mr. Savery of 9 November 2005, the aforementioned public interest disclosure that was not investigated by Mr. Savery.
 108. Our representations to the DPP sought that the charges be dropped and gave both technical reasons for the inaccuracies of the charges and presented grounds of no public interest in pursuing the charges.
 109. A copy of the video in which ACTPLA compliance staff issued the Notice of Prohibition on 23 March 2006 is at **Annexure E**.
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Issues

The 'compliance flag' placed on the building file of Block 10 Section 36 Reid

110. For two years we were subjected to false and misleading claims of unapproved works. We had endured two AAT hearings, after which the AAT admitted we should not have had to submit the amended DA we were forced to submit. ACTPLA withheld documents from the AAT process, meetings were held with the RRA, most of which went unrecorded. There is evidence of documents being manipulated, potential trespass, misleading briefings being provided to Ministers, probably breaches of privacy, and a complete lack of proper investigation at all levels of Government. The final insult for us was to have Mark Power charged as a criminal for the act of repairing a property.
111. After all this had occurred, Mr. Neil Savery who had dismissed our concerns on many occasions, and had appeared to have failed to investigate the claims made against us and by us wrote a letter in July 2006 claiming we had four unapproved works on the property and advised he had placed a 'compliance flag' on the building file of Block 10 Section 36 Reid. Further, he indicated the flag would re-surface if we chose to sell our house. He also indicated if a complaint was received he would investigate the matter in accordance with the requirements of the *Land (Planning and Environment) Act 1991*.
112. Mr. Savery placed a flag on the file based on a claim of four non-compliant works. We claim all four accusations are wrong. However, one such claim related to the rendered brick wall. Drawing WD-03 Rev C in the Building Approval (BA) set of drawings that were approved on 4 April 2003 showed a rendered brick wall in the exact location it has been built. That which Mr. Savery claimed to be 'unapprovable' had in fact been approved over 3 years earlier, and was on the ACTPLA files. Mr. Savery had failed to undertake the most basic of searches, just as his staff and the staff of the heritage Unit had failed to do on so many previous occasions.
113. Furthermore, Mr. Savery undertook an action that has the potential to cause significant financial detriment to us or our children, and action that was based on wrong information.
114. There are many issues associated with this latest claim made by Mr. Savery, including:
- We considered his letter a threat, and meant to coerce us into lodging another unnecessary DA, a threat that is in direct contradiction of the Section 9 of the *Public Sector Management Act 1994*.
 - We could not find any reference to a 'compliance flag' within any legislation. This raises questions over the authority of Mr. Savery to undertake the action he has.
 - Given the financial implications of what has occurred there does not appear to be any appeal mechanism to have the 'flag' removed.
 - Given our situation ACTPLA has claimed incorrectly some works as being unapproved, even though they have legal approval in accordance with Section 34 of the *Building Act 1972*. If ACTPLA can get it so wrong, how does a member of the public correct a public file they do not control?
 - Given the nearly three year history of this matter, what was the real motivation for the action taken by Mr. Savery?
115. The letter from Mr. Savery to Mark Power of 17 Jun 06 and Mark Power's response is at **Annexure F**.
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Section 3: Subsequent investigations

Issue

Investigations sought by Power's

116. Throughout this matter, the Power's have sought investigations into the actions of ACT Government employees. The culmination was a list of potentially 58 breaches of law provided to many agencies. To date, no one has chosen to investigate these breaches of law. All have washed their hands.
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Commonwealth Ombudsman

117. The Commonwealth Ombudsman was approached in Jan 05. Their interim report was not published until Oct 05. The accuracy of that report was challenged. A further report was issued in Jun 06. That report was also flawed as it failed to take account of material provided post Jan 05.
118. The Ombudsman's office has acknowledged their investigation was less than ideal, and has apologized for their handling of our case.
119. The Ombudsman did not investigate the potential breaches of law and did not investigate potential breaches of privacy.
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Federal Privacy Commission

120. The Federal Privacy Commission was approached in Jan 05 to investigate a complaint about potential breaches of privacy by ACTPLA, the Heritage Unit and the Office of the Chief Minister. In Jun 06 Mark Power received informal advice that ACTPLA and Heritage had taken over four months to respond to requests for information. Further, the Commission held concerns about the disclosures made to members of the Reid Resident's Association and others.
121. As at the date of this submission, no report has been provided by the Federal Privacy Commission, even though the complaint was lodged over 20 months earlier.
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Commissioner for Public Administration

122. The Commissioner for Public Administration was approached to investigate the inappropriate behaviour of public servants in Feb 05. They declined to investigate the matter. A letter advising of their disinterest in our matter was found to have mismatching file properties, indicating potential manipulation of material.
-

Registrar General

123. The Registrar General was informally asked to investigate the behaviour of the Reid Residents Association in relation to their claimed membership and representations they made to both the AAT and ACTPLA and the Heritage Unit.
124. The Registrar General indicated he had limited capacity to investigate the RRA, unless fraud was involved. No action was taken.
-

Australian Federal Police

125. The AFP was provided full details of our matter as it progressed. On many occasions, the nominated officer indicated our case had 'pricked their attention'. However, before the charges were dropped, the AFP indicated our case would not rate high enough priority to warrant investigation: it did not involve murder or rape.
126. The AFP has not investigated our claims.
-

Auditor General

127. The Auditor General was approached in the first quarter of 2006. Informal advice was that they chose not to undertake a full investigation on the basis that the Ombudsman and Privacy Commission had been involved. Unfortunately, the investigation by the Ombudsman's office on which the Auditor General relied for their non-involvement, was flawed.
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Issue**Director of Public Prosecutions**

128. The DPP was provided details of the allegations of inappropriate behaviour and potential breaches of law. The DPP indicated that it cannot investigate the claims, drawing on the distinction between prosecution and investigation. The DPP has done nothing with the potential breaches of law by public officials.
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Office of Human Rights Commissioner

129. The Office of the Human Rights Commissioner was approached to lodge a complaint about the potential human rights abuses we have suffered over the past three years. The office informed us that the Human Rights Act does not have any mechanism to lodge a complaint. They indicated there was nothing they could do.
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Conclusions drawn

130. The DPP indicated they cannot investigate the myriad of potential breaches of law by public officials as the distinction between prosecution and investigation precludes their involvement.
131. The Australian Federal Police has stated to me they are staggered by our case, but due to resource constraints and the fact the matter does not involve a crime such as murder or rape it will not rate sufficient a priority to be investigated.
132. The Federal Privacy Commission has a narrow charter and is focusing on one issue only, disclosures to the Reid Resident's Association and other members of the public.
133. The ACT Registrar General informs me he has little power to deal with the Reid Residents Association.
134. The Human Rights Commission informs me there is no mechanism to lodge a complaint under the ACT Human Rights Act.
135. The ACT Auditor General has indicated that due to the Ombudsman investigation, they will not review the case.
136. The above simply proves there are limitless Government resources available to pursue an individual, to the point of laying criminal charges, but no Government department or agency has the resources or interest to correctly investigate the behaviour of Government.
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The really big questions

137. When faced with criminal charges, Mark Power made extensive written representations to the most senior prosecutor in the Territory. While the correct outcome was achieved, we were staggered that the DPP needed to spend nearly 4 hours of face to face meetings with us, was obviously involved in other briefings and research, and took 8 weeks to decide that the act of repairing 75 year old failed render was not a criminal activity.
138. We have not had closure. The ACT Government through ACTPLA, the Heritage Unit, Heritage Council and EPA has inflicted enormous financial, emotional and personal stress on all our family for three years.
139. The agencies charged with investigating what has occurred have all justified their inaction. Why, and what is being hidden?
140. From where we sit, it seems a 'perfect system', the individual can be pursued for years, the individual is actually guilty until their persistence highlights all the inadequacies of the Government which has the potential to cause embarrassment or liability, and even then, in our case, 'flags' are placed on files so our children may suffer unlawful financial detriment years from now.
141. The big questions:
- Why did this happen?
 - Why was it allowed to continue?
 - Why have those that have inflicted this gross injustice on us not been held to account?
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Annexures

- A. Copy of letter from AAT relating to lack of authority
- B. Copy of letter from Mark Power to AAT pointing out error of law and copy of AAT response
- C. Correspondence between Mark Power and the EPA
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Annexure A.

Copy of letter from AAT relating to lack of authority



Australian Capital Territory Administrative Appeals Tribunal

Ref: AT04/43

27 January 2005

Mr Mark Power
39 Anzac Park
REID ACT 2612

Dear Mr Power

Re. Power and ACT Planning and Land Authority and Anor

I refer to your letter dated 20 January 2005 regarding the above matter.

Your letter refers to advice which you received from the Chief Minister's office which suggests that the planning authority is unsure of what action is required to be taken by the decision made by the Tribunal in this matter on 23 June 2004.

The decision of the Tribunal was, in fact, made in accordance with the terms of a decision proposed by the parties pursuant to section 43B(1) of the Administrative Appeals Tribunal Act 1989. The document containing the decision requested to be made by the agreement of the parties to the proceedings was lodged following the Tribunal drawing the attention of the parties to the fact that the statement of reasons for the decision of the planning authority showed that it had not determined the application before it in accordance with the requirements of section 247 of the Land (Planning and Environment) Act 1991. The Tribunal drew attention to the fact that in doing so the planning authority had made the same error as was revealed in Unibuild Technology and Minister for Planning & Anor [2003] ACTAAT 20 (15 April 2003) and Srbagi and ACT Planning Authority & Anor [2003] ACTAAT 48 (30 October 2003). In the latter case recommendations were made by the Tribunal that were designed to avoid the further repetition of the error.

The decision of the Tribunal became effective on 23 June 2004. The Tribunal would expect that prompt action would be taken by the planning authority to implement the decision.

Should the planning authority now have uncertainty as to what is required by the decision of the Tribunal, it would be open to it to seek clarification of the position from its officer or officers who provided instructions to the Government Solicitor to sign the document requesting the decision to be made by the Tribunal or the solicitor who signed the document on its behalf.

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(02) 62174279
Facsimile: (02) 62174505

E-Mail: magistrates.court@act.gov.au

Your letter does not request any specific action to be taken by the Tribunal. As the Tribunal does not have the power to enforce compliance with a decision made by it there may be no action able to be taken otherwise than to draw attention to the matters I have set out above.

I have sent a copy of your letter and of this reply to the planning authority and the Chief Minister's office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicole Marshall', with a long horizontal flourish extending to the right.

Nicole Marshall
Deputy Registrar

Annexure B.

Copy of letter from Mark Power to AAT pointing out error of law and copy of AAT response.

26 August 2005

FAXED
26.8.05

Mark & Beatrice Power
39 Anzac Park
REID ACT 2616

President
ACT Administrative Appeals Tribunal
GPO Box 370
CANBERRA CITY, ACT, 2601

Dear Mr. Peedom

RE: AAT 05/40

With respect, I refer to the Tribunal's decision of 17 August 2005 in relation to the matter Mark William Stephen Power and Beatrice Power versus ACT Planning & Land Authority and Ors, my letter of 23 August 2005 and your response of 23 August 2005 (AAT 05/40).

I have been advised there is a prima facie case that an error of law has been made by the Tribunal in our matter. The error of law relates not to the decision taken, but rather, the fact a decision was made at all. Further, our advice is that prior to any appeal being launched in the ACT Supreme Court, the Court would expect the Tribunal be given every opportunity to address any error.

My letter of 23 August 2005 was an attempt to alert the Tribunal to the error of law. Based on the response provided, it appears my letter was taken literally. I therefore, provide this letter as further clarification.

Under the *Land (Planning and Environment) Act 1991*, the effect of Section 247 is to operate when an approval has been granted to undertake Building Work and prior to the issue of a Certificate of Occupancy and Use (COU). The practical application of this interpretation is embedded in the form at folio 124 of the T Documents. An examination of that form, and specifically the text next to the minor amendment box ticked and accepted by the ACTPLA delegate will reveal the following statement:

"Minor amendment (S247) – to an application already approved where a Certificate of Occupancy has not been issued"

An examination of the header and footer of the form will reveal the document is an approved form, issued under the authority of Section 287A of the *Land (Planning and Environment) Act 1991*.

We wish to advise that we had received a COU under Section 53(3) of the *Building Act 1972* on 12 November 2003, three months prior to the Respondent in our matter requesting us to lodge an amendment under Section 247 of the Act, an application made via the use of the said form at Folio 124 of the T Documents.

The issue of a COU under Section 53(3) of the *Building Act 1972* precluded the Respondent in our matter requesting us to submit an amendment to a Building Work that was already complete. The COU covered all works completed under Stage 1.

Further, we note that the effect of this error has been to perpetrate on my family, over 20 months of anguish, frustration, significant financial cost, delays and emotional trauma, particularly for my children. We wrote to the Respondent and the responsible Ministers as early as November 2003 advising we did not require an amendment. Over the next 20 months, we repeatedly raised the issue of the COU with the Respondent. As late as May 2005, prior to launching the AAT action, we were continuing to inform the Respondent that we had COU, and the amendment was not required. It appears no-one wishes to acknowledge the existence of the COU.

I note with interest in your decision of 17 August 2005, you acknowledged that "...the respondent's officers have still not developed a good understanding of the legislation which they administer". Your comments targeted the application of Section 247 of the *Land (Planning and Environment) Act 1991*. I suggest the incorrect use of the form at Folio 124 of the T Documents by staff of the Respondent provides further proof of your observations.

I now turn to the decision of the Tribunal taken on 17 August 2005. I note the decision was to set aside a refusal made under an incorrect section of the *Land (Planning and Environment) Act 1991* (Section 230) and substitute effectively the same decision, but under the correct section of the *Land (Planning and Environment) Act 1991* (Section 247) for minor amendments. Had the minor amendment as submitted been lodged prior to the issue of the COU, the decision of the Tribunal could not be subject to challenge. However, I contend the amendment as submitted was not required, proven by the details provided in the T Documents at folio 124 (dated 10.2.04) and folio 202 (dated 12.11.03). As stated in your ruling of 17 August 2005, " if incorrect advice was given by anyone it is not a matter that should affect the decision which we have concluded is appropriate in this case. It would be inappropriate for the Tribunal to repeat errors made by others, if errors were in fact made." I believe the only appropriate decision would have been to rule the amendment was not required and hence the Tribunal could not rule on the matter.

I now turn to the authority available to the Tribunal to deal with the matter now at hand. I note two previous matters, specifically:

- Fleischinger and ACT Planning & Land Authority [2005] ACTAAT 13 (11 July 2005), and
- B&T Homes Pty Ltd and The Building Controller [2003] ACTAAT 37 (27 May 2003).

I note in both of these matters the Tribunal determined it may reverse or change a decision based on the authority vested in Section 180 of the *Legislation Act 2001*. I also note that there was consideration of the principles of *functus officio* and Section 44A of the *Administrative Appeals Tribunal Act 1989*. I believe an examination of the abovementioned matters, combined with the criteria defined by you in the matter B&T Homes when compared with the material I now present and available through the T Documents and witness statements, the Tribunal has available the necessary reason to apply Section 180 of the *Legislation Act 2001*.

We note that section 44A of the *Administrative Appeals Tribunal Act 1989*, allows the tribunal to "correct an error in an order or decision of the tribunal that arises from a clerical mistake or an accidental slip or omission" [emphasis added]. The Respondent in our matter failed to acknowledge the existence of the COU in their facts and contentions, a matter we intended bringing up throughout the course of the hearing. However, due to submissions made, we were not given the opportunity to verbally inform the Tribunal of the existence of the COU in the T Documents. There was an omission to which the Tribunal was unaware.

With respect, we formally wish to advise you of the above facts and seek the Tribunal to apply Section 180 of the *Legislation Act 2001* and to the extent it is relevant, section 44A of the *Administrative Appeals Tribunal Act 1989* in our matter.

Yours sincerely,



Mark Power



Australian Capital Territory Administrative Appeals Tribunal

Our Ref: AT05/40

2 September 2005

Mr Mark Power
39 Anzac Park
REID ACT 2612

Dear Mr Power

I refer to your letter dated 26 August 2005.

The Tribunal has jurisdiction to review a decision made in the purported exercise of a power conferred by an enactment. The jurisdiction of the Tribunal is not removed by error on the part of the decision-maker. The Tribunal is empowered to correct error and make a new decision where error is detected.

The decision which you applied to have reviewed was made in purported exercise of the power conferred by section 247 of the Land (Planning and Environment) Act 1991. Jurisdiction is conferred on the Tribunal to review such a decision. The statement of facts and contentions lodged by you with the Tribunal and served on the other parties requested the making of a decision pursuant to section 247.

There does not appear to the Tribunal to be any basis for a suggestion that you were not given opportunity to inform the Tribunal of matters which you considered relevant to its decision.

The Tribunal notes that if it were to accept your suggestion that the power under section 247 could not, in the circumstances, be exercised the result would be that the amendment for which you applied could not have been made and that any approval which existed prior to your application would remain extant. The decision of the Tribunal produces the same result.

GPO Box 370
Canberra City ACT 2601
ACT Magistrates' Court
Knowles Place
Canberra City ACT 2601

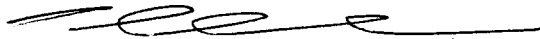
DX: 5691
Telephone: (02) 62174261
(02) 62174279
Facsimile: (02) 62174505

E-Mail: magistrates.court@act.gov.au

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The Tribunal does not, in any event, consider that the matters referred to in your letter justify the matter being re-opened and does not propose to take any further action in response to your request beyond forwarding a copy of your letters dated 23 August 2005 and 26 August 2005 and the Tribunal's replies to the respondent and the party joined for their information.

Yours sincerely



Nicole Marshall
Deputy Registrar

cc. ACT Government Solicitor
Level 5, 12 Moore Street
CANBERRA ACT 2601
Attention: Sky Sim

cc. Reid Residents' Association Inc.
C/- 41 Euree Street
REID ACT 2612
Attention: John Tucker

Annexure C.
Correspondence between Mark Power and the EPA



ACT Government

environment ACT



Mr Mark Power
39 ANZAC Park
REID ACT 2612

Dear Mr Power

I am the Senior Investigator within the ACT Environment Protection Authority (EPA). I am currently investigating the alleged unapproved building/renovation works undertaken at the residence situated at 39 ANZAC Park, Reid in the ACT.

I wish to arrange an interview with you to discuss these matters. I intend to conduct a series of interviews with a number of people relating to a possible breach of the *Heritage Act 2004*. Your interview would be formally tape-recorded and under the usual legal caution. You may have a friend or legal representative present if you so desire. You are under no obligation to take part in any formal interview.

The alleged breach under investigation is:

'Diminishing the heritage significance of a place or object'.

The alleged breach may constitute an offence as provided for within Section 74 of the *Heritage Act 2004*. In the course of investigation other offences may be identified and pursued.

Could you please contact me on 6207 2581 as soon as possible to discuss your availability for the proposed interview.

Yours sincerely

Rod P West
Senior Investigator
Environment Protection Authority
Arts, Heritage and Environment

6 December 2005

ENVIRONMENT ACT • ENVIRONMENT PROTECTION

Level 2 Annexe, Macarthur House 12 Wattle Street, Lyneham ACT PO Box 144, Lyneham ACT 2602
Telephone 02 6207 9777 Fax 02 6207 6084 email environmentACT@act.gov.au website www.environment.act.gov.au

9 December 2005

Mark and Beatrice Power
39 Anzac Park,
REID ACT 2612

Mr. Rod West
Environment Protection Authority
Environment ACT
PO Box 144
Lyneham ACT 2602

Dear Mr. West

RE: INVESTIGATION INTO ALLEGED UNAPPROVED BUILDING WORKS

I refer to your letter of 6 December 2005 in which you identify yourself as a senior investigator within the Environment Protection Authority. You lay out in very general terms the nature of your investigation.

As you are undertaking the investigation I assume this is not a criminal investigation and the requirements of the Human Rights Act 2004 and the process of natural justice apply. Therefore, in order to consider your request to participate in the investigation there is some basic information I require. I would appreciate if could be provided me with the following information:

- The exact details of what the alleged "unapproved building/renovation works" are.
- The exact identification of what heritage place or object we have allegedly diminished the heritage significance of.
- The exact nature of the how we have allegedly diminished the heritage significance of the identified place or object.
- The exact details of who has raised these allegations, when the allegations were raised and how often.
- The details of the authority under which this investigation is being conducted.
- The details of the person initiating the investigation and approving its conduct.
- The terms of reference of the investigation.

I request the above information be provided to me in writing.

Yours sincerely,



Mark Power



ACT Government

environment ACT



Mr Mark & Mrs Beatrice Power
39 ANZAC Park
REID ACT 2612

Dear Mr and Mrs Power

Re: Block 10 Section 36 Reid – 39 ANZAC Park Reid

Thank you for your facsimile response to my letter.

I am seeking to formally interview you both to ascertain the sequence of events leading up to the removal of the external 'icing cake' white render and the replacement of the original painted timber window frames, glazed front door and sidelights at 39 ANZAC Park Reid within the Reid Heritage Precinct.

The alleged breach under investigation is the removal of the external 'icing cake' white render from the residence and the replacement of the original painted timber window frames, glazed front door and sidelights of the residence that may have led to:

'Diminishing the heritage significance of a place or object --

(The 'place' being the residence situated at 39 ANZAC Park Reid).

The alleged breach may constitute an offence as provided for within **Section 74** of the **Heritage Act 2004**. Penalties apply. In the course of investigation other offences may be identified and pursued.

The alleged breach would constitute a criminal offence if found proved in a court and as such my interview with you, if you agree, would be conducted in accordance with the provisions of Part 1C of the *Crimes Act 1914*. You may have a friend or legal representative present if you wish.

In respect to your other questions regarding this matter, I am an '*Authorised Officer*' appointed pursuant to Section 78 of the *Heritage Act 2004*. That is my authority to conduct this investigation. The investigation is being conducted on behalf of and at the instigation of, the Environment Protection Authority.

I am happy to discuss other matters personally. Please contact me on 6207 2581 if necessary, to further discuss my request. Alternatively, I would appreciate your written decision on your availability for the proposed interview prior to 24 December 2005.

Thank you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rod West', with a stylized flourish at the end.

Rod P West
Senior Investigator
Environment Protection Authority
Arts, Heritage and Environment

12 December 2005

23 December 2005

Mark and Beatrice Power
39 Anzac Park,
REID ACT 2612

Mr. Rod West
Environment Protection Authority
Environment ACT
PO Box 144
Lyneham ACT 2602

Dear Mr. West

RE: INVESTIGATION INTO ALLEGED UNAPPROVED BUILDING WORKS

I refer to your letters of 6 and 12 December 2005 and my letter of 9 December 2005.

In my letter to you of 9 December 2005 I asked for some information in relation to your investigation. I note that some of my questions remain unanswered. I therefore again seek clarification on some specific issues I have raised so I may respond to your request. I also have some supplementary questions based on your response.

In my letter I asked for the "details of the person initiating the investigation and approving its conduct". You indicated the "investigation is being conducted on behalf of and at the instigation of, the Environmental Protection Authority". I again seek clarification: how did the EPA become aware of these allegations, who specifically raised them, and when?

In my letter of 9 Dec 05 I asked for the "details of the authority under which this investigation is being conducted". You indicate you are an authorised officer appointed pursuant to Section 78 of the *Heritage Act 2004*. I believe any appointment made under Section 78 of the *Heritage Act 2004* must be made by the Chief Executive. For the Chief Executive to establish you as an authorised person, a legal instrument must exist in the form of an Instrument of Appointment (or the like). Could you please provide me with a copy of your Instrument of Appointment (or equivalent) that defines you as an *Authorised Officer* for the purposes of Section 78 of the *Heritage Act 2004*, provides the date you were appointed and defines the duration of your appointment.

In my letter of 9 Dec 05 I specifically asked for the "terms of reference of the investigation". I note your response does not include this information. Further, I note Section 74 of the *Heritage Act 2004* defines offences against Section 74 (1), 74(2) and 74(3). Could you please provide me with the terms of reference of your investigation and an explanation as to which sub-section of Section 74 you are investigating.

Finally, I note your letter of 12 December 2005 indicates the offence would be criminal offence, implying a breach against the *Crimes Act 1914*. I would appreciate an explanation of how your investigation into a matter against the *Heritage Act 2004* can result in a breach against the *Crimes Act 1914*.

As before, given the nature of the allegations being made, I cannot provide you with the answer you seek until I am made fully aware of the circumstances of your investigation. The principles engrained in our democratic society, the requirements of the *Human Rights Act 2004* and the process of natural justice demands I be given this information.

As before, I request a written response.

Yours sincerely,



Mark Power

Annexure D.
'Investigation report' prepared by Environment ACT

NOTE FOR FILE

I have examined the issues raised in the letter written by Mark Power. From my perspective staff have acted in a professional manner while dealing with a difficult issue under difficult circumstances. The claims of harassment, intimidation and victimisation are not substantiated.

Mr Power needs to ensure he complies with the relevant legislation.



Gerhard Zatschler
Manager
Resources Management
30 January 2004

Annexure E.

Copy of video of ACTPLA issuing invalid Notice of Prohibition on 23 March 2006

Annexure F.

Letter from Neil Savery of 17 Jun 06 and Mark Power's response

Mr Mark Power
39 Anzac Park
REID ACT 2612

Dear Mr Power

CC2006/40452-3

I am writing to you in relation to the decision of the Director of Public Prosecutions to terminate the two prosecutions in relation to block 10 section 36 Reid.

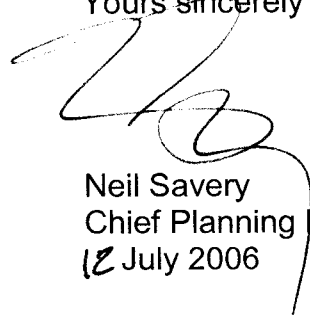
While the Director has determined that prosecution should not be pursued, there remain unapproved works on your block, specifically the smooth render on the original cottage, the pillars, the replacement windows, and the masonry wall adjacent to block 9. Although it may be available to the Authority to approve the render and replacement windows, the pillars and masonry wall are inconsistent with specific mandatory Heritage requirements and are therefore unapprovable.

Given the decision of the Director in this matter the Authority has no plans to commence further enforcement action under the *Land (Planning and Environment) Act 1991* ("the Act") in respect of the unapproved works. Instead, the Authority has placed a compliance flag on block 10. Should you wish to sell your block at some time in the future, the conveyancing enquiries will show that there are unapproved works shown in the Authority's records.

It needs to be understood that should the Authority receive further complaints about unapproved works (including these works) on your lease, the matters will be investigated and dealt with in accordance with the Act. This letter should, however, not be interpreted as representing the position of the Heritage Council.

The Authority would be happy to receive a Development Application seeking approval of the render and windows. The application would be considered in accordance with the requirements of the Act, noting that such an application is not subject to third party appeals.

Yours sincerely



Neil Savery
Chief Planning Executive
12 July 2006

21 July 2006

FAXED
21.7.06

Mark Power
39 Anzac Park,
REID ACT 2612

Mr. N. Savery
Chief Planning Executive
ACT Planning and Land Authority
GPO Box 1908
Canberra ACT 2601

Dear Mr. Savery

RE: CC2006/40452-3

I refer to your letter of 12 July 2006. By signing the letter, you are personally taking responsibility for the actions of ACTPLA, the accuracy of its content and the subsequent implications. I wish to inform you your letter contains errors.

You claim the prosecutions were terminated. This is not the case. The matters were presented to the Chief Magistrate on 23 June 2006. The DPP offered no evidence, the matters were dismissed and we were awarded costs.

You claim the masonry wall is 'unapprovable'. You should know that on 4 April 2003 our Building Approval (BA) for Phase 1 works was granted under Section 34 of the *Building Act 1972*. The BA set included drawing WD-03 Rev C that showed a rendered brick wall in the exact location the wall has been built. I confirmed the presence of the drawing on the building file on 19 July 2006. That which you claim is 'unapprovable' was approved for construction on 4 April 2003.

Your claim about 'smooth render' not being approved is wrong. The work we undertook did not require approval. You know there is nothing in the *Land (Planning and Environment) Act 1991*, the associated regulations, or the Territory Plan that specifies the finish to be used on homes in Reid. You know of the reports, briefings and letters provided by members of the Heritage Council and the Minister in the period 12 November 2003 until 10 February 2004. You know the one piece of 'official advice' from the Heritage Council of 26 February 2004 was provided under questionable circumstances and in relation to an unnecessary and invalid amendment of an already complete development. You should know the 'official advice' has no legal status.

You also know under the *Land (Planning and Environment) Regulations 1992*, Schedule 1, Item 8, a development undertaken for the purpose of maintenance is exempt from Section 6 of the *Land (Planning and Environment) Act 1991*. Section 40(4), of the regulations does not apply if the heritage guidelines are followed. You know the guidelines in V173 allows for the removal of render for the purpose of repair. You know ACTPLA was given a copy of our engineering advice dated 3 December 2003 regarding the condition of the render. You know of the further expert advice we have in relation to the condition of the render. You know the charges relating to render were dropped.

In relation to the pillars, again you are wrong, they are gate posts. The first set was constructed under V56. You know V56 was silent on gate posts and as such, their construction was not inconsistent with the Territory Plan when erected. You know erection of the second set (along with vital repairs to our property) was delayed from October 2003 as the result of a complaint lodged by a resident of Reid and the subsequent actions taken against us, a fact that led to us having to cover significant unnecessary costs and live on a construction site for nearly three years.

In relation to the windows, you are also wrong, their repair is also an exempt activity. The form of the windows on houses in Reid is not a mandatory requirement in any legislation. You know both ACTPLA and the Heritage Unit were provided details of the replacement windows on 12 and 28 November 2003, advice for which we never received any response. You also know the comment about the 'official advice' of 26 February 2004 applies here. Finally, you know the work done on the windows was for the purpose of maintenance and hence is an exempt activity under the *Land (Planning and Environment) Regulations 1992*, Schedule 1, Item 8.

In relation to the 'compliance flag', I am unable to establish any reference in any ACT legislation to a 'compliance flag' relating to building files which provides legal authority for the action you have now taken. I am also unable to establish the mechanism available to appeal the action of placing a 'compliance flag' on a building file. Given the use of these files in every legal transaction for the sale of a property in the ACT, I would have thought such a mechanism was vital.

In relation to your comment about what you will do if a complaint is received, you know of the 134 signatures of people who do not support the action you have taken, and who make specific reference to smooth render. You should know of the further representations made to the Planning Minister by members of the public. You know of the briefing provided by ACTPLA to members of the public, including committee members of the Reid Residents Association (RRA) and others not linked to this group that occurred on 16 March 2004, a meeting requested by ACTPLA, a meeting that has not been recorded by ACTPLA, a briefing that breaches many pieces of legislation and a briefing denied when questioned by the Commonwealth Ombudsman. You know the decision taken by ACTPLA on 8 March 2005 to refuse an invalid minor amendment that occurred some 8 ½ months after a direction of the AAT by claiming significant detriment to the RRA even though official records indicate no liaison by ACTPLA with this group. You know of the disclosures made by the Heritage Unit to the same groups over many months, disclosures that are still the subject of official investigation.

Given the relationship that has existed between ACTPLA, the Heritage Unit and some residents of Reid, the further relationship between ACTPLA, the Heritage Unit, architects and others, the dysfunctional relationships in this matter (as described by the DPP), the huge community support we have for which we have provided evidence, and the general lack of appropriate investigation by ACTPLA and Heritage Unit, any complaint received about our property would need to be viewed with significant suspicion.

I note on 24 May 2005 your comments to the Select Committee on Estimates about investigating our complaints raised with you personally on 17 March 2005 (that included the associated evidence):

"I was concerned enough to take the issues up in an informal capacity with the officers responsible, who have denied the claims that have been made".

You should know that my letter to you of 9 November 2005 was a public interest disclosure. To the detailed disclosure of highly questionable behaviour you simply stated the material *"though detailed and exhaustive in content fails to address the issue of relevance..."* Rather than act in accordance with the requirements of the *Public Interest Disclosure Act 1994*, you indicated you sent the letter to the Government Solicitor.

As a final comment about what you will do if a complaint is received, I consider this a threat, and a threat meant to coerce a member of the public, a threat in direct contravention of Section 9(g) of the *Public Sector Management Act 1994*.

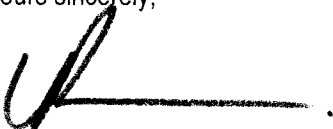
Throughout this letter I have used the term 'you know'. I chose these words due to the material you were provided via the many conversations and correspondence with me, records of which I have kept. If you claim there are some matters for which you had no details, as head of a Government Agency who has taken the action you now have, you had a duty of care to find out, particularly given the history of this matter.

This whole saga started with a complaint from a member of the public, a person linked to the RRA. For nearly three years we have had to defend ourselves against incorrect claims and actions, suffer significant emotional and financial costs and delays due to ACTPLA, the Heritage Unit and Heritage Council not performing their statutory duties in accordance with legislation, attend the AAT twice and counter consultant barristers, point out errors of law to members of the judiciary, attempt to expose highly inappropriate behaviour, face vexatious EPA investigations, live with multiple invalid Notices of Prohibition that have forced us to live on a construction site, and face the indignity of standing before a magistrate as an accused criminal for the simple act of maintaining my home.

After all this, as head of ACTPLA, you make further incorrect accusations, place a 'compliance flag' on the building file of Block 10 Section 36 Reid which is based on incorrect assertions, and forewarn the cycle starting again by referring to potential community complaints, a community with which Government officials have held many briefings about our property, the majority of which have never been recorded by those same officials on official files. We have been continually dismissed. How ironic you now inform me you will investigate and deal with a complaint in accordance with the Act.

I suggest you stop wasting tax payer's money, my money, remove this thing called a 'compliance flag', acknowledge your errors, apologise, and correct the actions of you and the other government officials that have inflicted nearly three years of unnecessary grief, stress, delays and financial burden on me and my whole family.

Yours sincerely,



Mark Power