

2006

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT RESPONSE TO STANDING COMMITTEE
ON PUBLIC ACCOUNTS REPORT NO. 7, SEPTEMBER 2006

Review of Auditor-General's Report No 2 of 2005:
Development Application and Approval Process

TABLING STATEMENT

Presented by
Mr Simon Corbell MLA
Minister for Planning

14/12/06

Mr Speaker, I table the Government's response to the Public Accounts Committee Report Number 7 of September 2006 - Review of Auditor-General's Report No 2 of 2005: *Development Application and Approval Process*.

The Auditor-General's report on the ACT Planning and Land Authority's development application and approval processes was tabled in the Assembly on 5 May 2005.

The Public Accounts Committee made 20 recommendations following its review of the Audit Report.

The Government has accepted the majority of the Committee's recommendations as most of the findings and recommendations of the Audit report were previously accepted and have in fact been implemented.

As noted in the Committee report a number of matters are also currently the subject of the Planning System Reform Project.

The Planning System Reform Project is one of the Government's major policy reforms. It proposes a range of improvements to the development application and approval processes that go well beyond the findings of the Audit Report and that of the Public Accounts Committee.

The draft Planning and Development legislation, which is the subject of a separate report of the Planning and Environment Committee, is the most significant reform to planning legislation in the ACT since self-government. As I recently commented in the Assembly we have the opportunity to put in place the national leading practice model for development assessment, and we will be the only jurisdiction in the country to have that national model in place, virtually in its entirety, and that is a real step forward for the ACT.

In this context it was disappointing that when reporting on the Public Accounts Committee's report, the Canberra Times chose to run with its negative headline *Territory has 'worst planning regime'* rather than focus on the substance of the Committee's report and on the fact that many of the Auditor-General's recommendations had already been implemented.

This news report contrasted with the more balanced and constructive tabling speech by the Chair of the Committee in which he summarised the issues as the Committee found them, and also acknowledged the complexity of planning systems across the country.

It also contrasts with the recent national *Planning Report Card* undertaken by members of the Planning Institute of Australia. This reviewed the performance of all State and Territory planning systems across the ten most important criteria for a strong, healthy planning system. Whilst nationally the Report Card shows that there is much to be done, this initial survey of members showed that the ACT is rated highly in a number of the categories, and, based on the aggregated result, the ACT topped the opinion poll.

It is particularly pleasing to note that in relation to the criteria *Streamlined Assessment*, and excluding the Northern Territory (which the survey found that the number of respondents makes its result statistically unreliable), the ACT was rated the highest. The Report Card noted that for this criterion the ACT and South Australia are performing well, with *the ACT implementing the nationally devised 'leading practice model' for development assessment*.

The fact that the current Planning and Development Bill reflects cutting edge development assessment process as developed through the national Development Assessment Forum, and that the ACT will be the

first jurisdiction to implement this national leading practice model, obviously is not seen as being newsworthy by our local newspaper.

[Table Government Response]

Mr Speaker, I now table the Government's Response to the report of the Public Accounts Committee.

As I have mentioned, the Public Accounts Committee made 20 recommendations following its review of the Audit Report, and that the Government has accepted the majority of the recommendations. In fact many of the findings and recommendations of the Audit report were previously accepted and implemented.

I will briefly refer to some of the recommendations.

The Committee's first recommendation that "ACTPLA collate all AAT decisions and provide these in a clear and concise manifest so that a database of case law is easily accessible on the ACTPLA website for use by staff and proponents" is not supported because such a database is readily available either on the AAT website and from Australasian Legal Information Institute database (*AustLII*). For ACTPLA to maintain a separate database would be an unnecessary duplication of resources.

ACTPLA has however, previously established its internal 'AAT Decisions Review Committee', the terms of reference for which include 'to act as a high-level examination body for all planning related AAT decisions. This is to ensure that any legislative, policy or procedural reforms are addressed'. It is worth noting that a number of these are reflected in the Planning and Development Bill.

A number of the Public Accounts Committee's recommendations relate to training and development issues, especially as these impact on planners. Whilst agreeing with the thrust of the Committee's

recommendations, there are obvious resource issues that need to be considered.

The Committee also recommended that “ACTPLA ensure that its community engagement practices are consistent with the Government’s community engagement initiative”. This was made in the context of the time allowed for public consultation on the Planning and Development Bill.

ACTPLA’s community engagement processes are generally consistent with the ACT Government Community Engagement Manual and in some cases exceed the requirements as set out in that document. ACTPLA is also required to comply with the statutory obligations for consultation in relation to matters such as assessment of development applications and draft Territory Plan variations.

Much of the work that is carried out by ACTPLA is broken up into a series of consultation exercises over an extended period of time, which reflects the need to tailor consultation to the particular exercise being undertaken. Important recent examples are Molonglo Valley and, of course, the Planning System Reform Project.

In relation to the Planning System Reform, initial public consultation was undertaken over the period 27 May to 22 July 2005.

As well as the release of a Directions Paper, four Technical Papers and accompanying Fact Sheets, more than 100 information kits were distributed to businesses, community groups and environmental organisations. Twenty-seven information briefings were provided to a range of community, environment and industry representative groups, as well as to a range of government agencies and committees. Over 260 people participated in those briefings.

About 300 comments were recorded for consideration within this phase of the community consultation program and were be considered by ACTPLA. Over 60 formal submissions were received.

The seven week period for consultation on the exposure draft Planning and Development Bill was considered to be appropriate in the light of the earlier consultation that was undertaken. There was also the parallel inquiry into the Exposure Draft Bill by the Standing Committee on Planning and Environment, which provided further opportunities for submissions on the draft legislation.

The Exposure Draft Planning and Development Bill 2006 and associated documents were available for public consultation from 13 July to 31 August 2006. While this period was relatively tight, the consultation focussed on identifying any unintended consequences or impacts of the new planning system. It also introduced the community to an outline of the restructured Territory Plan and an example code and development table.

More than 320 people attended briefing sessions or workshops where stakeholder feedback was recorded. 26 formal written submissions have been received. A number of organisations were given an extension of time to finalise their submissions.

It is important to recognise that consultation outside the formal consultation process, has been ongoing during the Planning System Reform project and has involved a range of key stakeholders in a variety of forums and meetings. All feedback received has been and will continue to be considered as part of the process of drafting and refining the Bill. It has also informed development of the Territory Plan detail, which will soon be available for consultation.

Mr Speaker, the Committee also recommended that the Government prioritise the advancement of the proposed sustainability legislation as a funded initiative in the 2007-08 budget. As this is a matter for consideration within the Budget context, and Budget priorities are for Cabinet decision, it is not possible to agree to this recommendation at this time.

Mr Speaker I would like to thank the Committee for its report on this very important aspect of ACT planning.

2006

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GOVERNMENT RESPONSE: - STANDING COMMITTEE ON PUBLIC ACCOUNTS REPORT NO. 7 OF 2006
Review of Auditor-General's Report No 2 of 2005: Development Application and Approval Process

SUMMARY OF RECOMMENDATIONS	GOVERNMENT RESPONSE
RECOMMENDATION 1 5.27 The Committee recommends that ACTPLA collate all AAT decisions and provide these in a clear and concise manifest so that a database of case law is easily accessible on the ACTPLA website for use by staff and proponents.	<u>Agreed (in part)</u> ACTPLA collates and considers AAT decisions through its internal 'AAT Decisions Review Committee', which was established in February 2004. The terms of reference for the Committee include 'to act as a high-level examination body for all AAT (Land and Planning Division) decisions to ensure that any legislative, policy or procedural reforms are addressed'. This Committee reviews AAT decisions handed down by the Tribunal and refers those that need further consideration to the appropriate area. The AAT decisions database on case law is available on the AAT website (for decisions from 2004) and from <i>AustLI</i> (Australasian Legal Information Institute database). It is not considered necessary to develop a separate database for AAT decisions, as ACTPLA does not have the resources to collate and summarise AAT decisions.
RECOMMENDATION 2 5.28 The Committee recommends that ACTPLA develop and implement a formal feedback mechanism to allow decisions of the Administrative Appeals Tribunal to guide and inform the improvement of the planning system.	<u>Agreed</u> ACTPLA's AAT Decisions Review Committee (see response to Recommendation 1 above) provides a formal feedback mechanism that ensures that any legislative, policy or procedural reforms are addressed. A number of these have been considered in the context of the Planning System Reform Project, and where appropriate, have been reflected in the Planning and Development Bill.

RECOMMENDATION 3 5.29 The Committee recommends that ACTPLA prioritise the development of a more formalised training program to improve staff's understanding of legislative requirements.	<u>Agreed</u> The 2006-07 budget includes funding to provide a comprehensive training program aimed at understanding and implementing the proposed new legislation and Territory Plan.
RECOMMENDATION 4 5.37 The Committee recommends that ACTPLA investigate the provision of a telephone number for complaint purposes.	<u>Agreed</u> ACTPLA publishes its general contact phone numbers in its brochures, on the ACTPLA website and in the general phone book. ACTPLA will look to identifying the complaints number more clearly in the phone book and on its website. The current website includes a 'have your say' feedback button that invites suggestions, complaints and other comments.
RECOMMENDATION 5 5.62 The Committee recommends that ACTPLA ensure that its community engagement practices are consistent with the Government's community engagement initiative.	<u>Agreed</u> ACTPLA's community engagement processes are generally consistent with the ACT Government Community Engagement Manual and in some cases exceed it. In other circumstances ACTPLA is required to comply with the statutory obligations for consultation in relation to matters such as assessment of development applications and Territory Plan variations. Many of the exercises undertaken by ACTPLA are segmented in to a series of consultation exercises over an extended period of time, which reflects the need to tailor consultation to the particular exercise being undertaken. Important recent examples are Molonglo Valley and the Planning System Reform Project. In relation to the Planning System Reform, which the Committee commented on in terms of timeframes for community engagement, initial public consultation was undertaken over the period 27 May to 22 July 2005.

As well as the release of a Directions Paper, four Technical Papers and accompanying Fact Sheets, more than 100 information kits were distributed to businesses, community groups and environmental organisations. Twenty-seven information briefings were provided to a range of community, environment and industry representative groups, as well as to a range of government agencies and committees. Over 260 people participated in those briefings. About 300 comments were recorded for consideration within this phase of the community consultation program and will be considered by ACTPLA. Over 60 formal submissions were received.

The seven week period for consultation on the exposure draft Planning and Development Bill was considered to be appropriate in the light of the earlier consultation that was undertaken, and the parallel inquiry into the exposure draft Bill by the Standing Committee on Planning and Development which provided further opportunities for submissions on the draft legislation.

The exposure draft Planning and Development Bill 2006 and associated documents were available for public consultation from 13 July to 31 August 2006. Consultation focussed on identifying any unintended consequences or impacts of the new planning system but also introduced the community to an outline of the restructured Territory Plan and an example code and development table.

More than 320 people attended briefing sessions or workshops where stakeholder feedback was recorded. 26 formal written submissions have been received. A number of organisations were given an extension of time to finalise their submissions.

It is important to recognise that consultation outside the formal consultation process, has been ongoing during the Planning System Reform project and has involved a range of key stakeholders in a variety of forums and meetings. All feedback received was considered as part of the process of drafting and refining the Bill and in the development of the Territory Plan.

RECOMMENDATION 6 6.49 The Committee recommends that ACTPLA implement measures to ensure compliance with decisions of the Administrative Appeals Tribunal within reasonable timeframes.	<u>Agreed</u> ACTPLA has processes in place that ensure that it complies with decisions of the AAT within reasonable timeframes.
RECOMMENDATION 7 6.56 The Committee recommends that ACTPLA encourage the use of conciliation and mediation processes to resolve disputes and conflicts over development assessment processes, before a matter ends up before the AAT.	<u>Agreed</u> The Government introduced legislation in 2003 to require the consideration of mediation in all cases under the Land and Planning Division of the AAT Act. This has had the result that there has been a significant reduction of matters being taken to the AAT for a full hearing. In addition the number of appeals has been decreasing. The Authority invests considerable time in seeking to resolve disputed development outcomes before they become the subject of appeals, but in many circumstances finds itself in the middle of neighbour disputes. This is not a formal process because to do so would duplicate the statutory procedure established for the AAT.
RECOMMENDATION 8 6.57 The Committee recommends that the Department of the Territory and Municipal Services should more widely promote the Heritage Advisory Service.	<u>Agreed</u> The Department of Territory and Municipal Services will consider options to promote the Heritage Advisory Service.
RECOMMENDATION 9 7.15 The Committee recommends, to the extent that work is not already taking place, that ACTPLA embrace an adequately resourced organisational renewal approach/program to build organisational capability to support successful implementation of the Reform Project change effort.	<u>Agreed</u> In the context that the audit examined the development application process for the year 2003-2004, ACTPLA has undergone considerable organisational change and restructuring over the past two years to position it to deliver the Government's planning reforms.

	The current ACTPLA organisational structure has been implemented, with targeted recruitment, to meet both the Government's resource constraints and the proposed new planning system, which commenced with the Planning System Reform Project in December 2004.
RECOMMENDATION 10 8.25 The Committee recommends that ACTPLA promote the planning profession, job profile and the benefits of planning to school students, those working in associated areas and the community in general.	<u>Agreed</u> ACTPLA already conducts a public and school education program within the resources available to it to assist the community and school students to better understand planning processes generally and the planning profession through school education courses. This program is to be extended to include the development of education kits that will be aimed at both the higher primary school levels and also at the secondary college levels. Further, a 'planning explained' document and a revamped ACTPLA website are under development to enable the Authority to promote these messages to the broader community.
RECOMMENDATION 11 8.26 The Committee recommends that ACTPLA explore the feasibility of offering traineeships or cadetships which would provide structured supervision and guidance for students in their third year or higher of tertiary study.	<u>Agreed-in-principle</u> Whilst there are clear benefits in offering traineeships or cadetships to students at the tertiary level, current resources do not allow ACTPLA to implement such a program without creating further imposition on the limited capacity of those staff who would be needed to monitor and mentor cadets and trainees. As a result of participating in the Careers Market and Tertiary to Work, some student placement/work placement has been possible in ACTPLA on an ad-hoc basis.

RECOMMENDATION 12 8.27 The Committee recommends that the Planning Minister, where appropriate, support the Planning Institute of Australia's efforts to lobby the Commonwealth Government to recognise the planning profession as an Occupation in Demand, to make it easier for overseas planners to work in Australia.	<u>Agreed</u> The Minister for Planning has already offered his support to the findings of the Planning Institute of Australia's National Inquiry into Planning Education and Employment. (See report on Planning Institute of Australia's website www.planning.org.au). The ACT has been proactive in this initiative with the Chief Planning Executive's membership of the Planning Institute of Australia's Steering Committee for this National Inquiry. The Planning Institute at a national level has made a submission to the Minister for Immigration seeking the recruitment of planners from overseas. ACTPLA supports planners and members of the Planning Institute who wish to gain accreditation as a certified practising planner.
RECOMMENDATION 13 8.36 The Committee recommends that the Government encourage and support the work of the University of Canberra in establishing a professional planning course structure.	<u>Agreed</u> The Minister for Planning has supported the University of Canberra's efforts to establish a post graduate planning course in the ACT and the Chief Planning Executive has participated in workshops with the University of Canberra to explore the feasibility of establishing such a course. The Authority's staff regularly give presentations to CIT and university students in relation to planning subjects.
RECOMMENDATION 14 8.37 The Committee recommends, to the extent that work is not already taking place, that the Planning Minister initiate discussion with his state and territory colleagues with a view to lobbying the Commonwealth Government to provide greater resources and funding for university planning schools,	<u>Agreed</u> As noted in the response to Recommendation 12 above, the Minister for Planning has supported to the findings of national Inquiry into Planning Education and Employment.

and increase the number of funded places for planning students.	
RECOMMENDATION 15 9.7 The Committee recommends that the Government give consideration to prescribing in the proposed legislation that an independent review of the Act be conducted after three years of operation.	<u>Agreed-in-principle</u> It is not anticipated that a comprehensive review of the operation of the Act will be definitely required in the short to medium term (particularly given the extensive consultation on the reform directions and Bill content). In the event that this proves necessary, it will be able to be undertaken notwithstanding that it is not mandated in the Act. The operation of the Act will be continuously monitored by ACTPLA and the Minister for Planning with a view to deciding whether such an exercise is necessary.
RECOMMENDATION 16 9.13 The Committee recommends, to the extent that work is not already taking place, that ACTPLA investigate the capacity of its customer feedback system to act as a centralised data information system to support continuous improvement of the development assessment system.	<u>Agreed</u> The Authority's Customer Feedback System receives complaints, comments and compliments about all aspects of the Authority's business activities, including the processing of development applications. The information is used to identify trends or particular issues.
RECOMMENDATION 17 10.12 The Committee recommends that the Government prioritise the advancement of the proposed sustainability legislation as a funded initiative in the 2007-08 budget.	<u>Noted</u> The Government will consider any proposal for the development of sustainability legislation in the context of the 2007-2008 budget.

RECOMMENDATION 18 10.20 The Committee recommends, to the extent that work is not already taking place, that ACTPLA engage professionals with expertise in environmental management and sustainable development to develop and implement ESD guidance tools for staff.	<u>Agreed</u> ACTPLA employs a number of people, including the Chief Planning Executive, who have expertise in the field of environmental management and sustainable development, ACTPLA engages in work with a range of experts and in the case of ESD guidance tools is doing so with 'One Planet Living', CSIRO, Australian Greenhouse Office, Australian Building Codes Board and consultants working on ACTPLA projects such as Molonglo Valley planning and the Belconnen to City TransitWay. More can and will be done by ACTPLA within the resources available.
RECOMMENDATION 19 10.22 The Committee recommends, to the extent that work is not already taking place, that ACTPLA provide formal ESD training, delivered by professionals with expertise in environmental management and sustainable development, for all staff.	<u>Agreed</u> ACTPLA participates with in-house training and facilitating staff participation in external courses and seminars on environmental management and sustainable development issues. ACTPLA is also devising additional training opportunities targeting broad urban design and sustainable development skills for relevant staff.
RECOMMENDATION 20 11.3 The Committee recommends that the Legislative Assembly implement the recommendations of Auditor-General's Performance Audit Report No 2 of 2005: <i>Development Application and Approval Process</i>.	<u>Agreed</u> The majority of the recommendations either have been implemented, or are in the process of being implemented, as reflected in the responses to the Public Accounts Committee's recommendations.