LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

(Reference: Planning and Land Bill 2002)

Members:

MRS V DUNNE (The Chair)
MS K GALLAGHER
MS R DUNDAS

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 27 SEPTEMBER 2002

Secretary to the committee:
Mr D Abbott (Ph: 62050199)

By authority of the Legislative Assembly for the Australian Capital Territory

The committee met at 9.39 am.

SIMON CORBELL,

DORTE EKELUND,

DAVID SNELL,

MARTIN HEHIR, and

VIC SMORHUN

were called.

THE CHAIR: Can we take the opening words as having been said?

Mr Corbell: I am familiar with them and I think that the officers are, too.

THE CHAIR: Thank you, Minister, for agreeing to come along and start off the process with the inquiry into the Planning and Land Bill. Do you want to make an opening statement, or does somebody else?

Mr Corbell: Thank you, Madam Chair and members of the committee. I won't add anything further to the comments you have heard me make in the Assembly on numerous occasions, but I have with me Dorte Ekelund, who is the head of the planning and land task force, along with Martin Hehir, Vic Smorhun and David Snell, and they are happy to answer your questions, as am I. With your permission, Madam Chair, perhaps Dorte Ekelund could give you a brief presentation on the bill, the consequential amendments bill and some other elements of the reform package.

Ms Ekelund: I will try to keep it fairly brief. Essentially, we want to go through what the bill does and how it works. First of all, forgive us for being a little bit repetitive here, because we are aware that the committee is certainly aware of the main bill, but we do want to take a little bit of time just to recap what the bill is about, what is in the consequentials and what is in the details and also just to preview some changes to the Administrative Appeals Tribunal amendments.

First of all, the Planning and Land Bill establishes an object about what the bill is to achieve which doesn't exist in the land act at the moment. It then sets up three main entities, the Planning and Land Authority, the Planning and Land Council and the Land Development Agency. The object, we think, is very important in that the legislation is about providing a planning and land system that contributes to the orderly and sustainable development of the ACT consistent with social, environmental and economic aspirations of the people of the ACT and in accordance with sound financial principles. We think that that is a very important framework to set for the bill.

You have seen this diagram before. It illustrates how the three main entities are created and also that the Planning and Land Authority has a chief planning executive but that the Land Development Agency has a governing board.

The governance principles that underpin this legislation are that policy responsibility is to remain with the government and Assembly. There is no management board for the authority, as I have mentioned. There is a separation of the land delivery role and the policy and regulation functions of the authority. There is access to independent, expert advice, which must be considered in making decisions. The administration of planning, leasing and land development occurs at arms length from our elected representatives and there are clear lines of accountability.

To recap again, the functions of the Planning and Land Authority are to administer the Territory Plan, to plan and regulate land development, to advise on planning and land policy, to maintain our cadastral database, to make land information available, to grant and administer leases and licences, to determine development applications, to regulate the building industry, and to make orders, and we are introducing the ability for the authority to reconsider its decisions. It will also provide administrative support to the Planning and Land Council. From that list of functions, you will see why it is called the Planning and Land Authority, because this authority clearly has got long-term roles about being the custodian of the territory's land base.

The chief planning executive is the authority in the legislation. The appointment of the chief planning executive is for a term not longer than five years. The appointment is a notifiable instrument. The conditions of employment are agreed by the executive and subject to the Remuneration Tribunal Act. As I mentioned earlier, the chief planning executive is to exercise the functions of the authority.

The executive may suspend the chief planning executive and the Assembly can dismiss the chief planning executive. There were concerns expressed in the Scrutiny of Bills Committee, and we believe that those concerns have been well addressed by PCO.

Mr Corbell: I would like to interrupt there quickly to say that I have also written to you today, Madam Chair, providing the committee with a copy of my response to the scrutiny of bills committee on that matter.

Ms Ekelund: The authority staff are employed under the Public Sector Management Act. The Planning and Land Council is an expert, non-representative advisory body. It is to advise on planning and land policy and significant development proposals. It will be asked to comment and provide advice on any call-ins that the minister may make. The council must give advice, if it is asked by the minister or the authority to do so, and the council may exercise any other function given by law. The minister appoints the council members, but the appointments are disallowable. The minister must try to appoint people with expertise and experience in a certain range of disciplines and the legislation clearly sets out this range of disciplines. I won't go through them.

The role of the Land Development Agency is to develop land and carry out works for the development of land. Part of the role is, I guess, the delivery of strategic urban development projects for government. It is to operate on a commercial basis and therefore has a corporate management board, but the minister may direct on general policy and principles, and the agency must comply, but is given an opportunity to comment prior to having to respond to a direction.

If the direction may involve activities which reduce economic returns, then the territory will need to compensate the agency for those costs for it to comply with those directions.

THE CHAIR: Can you say that again, please, Dorte?

Ms Ekelund: If, for example, the Land Development Agency is directed to undertake an activity which is of a non-commercial nature, if we can compare it with an activity we found in Western Australia where their Land Development Agency was required to construct a marina, they were compensated through community service obligation funds for having to undertake a non-economic activity, but an activity which was considered to have broader benefits for the state.

THE CHAIR: Like golf courses and health clubs.

Mr Corbell: I think it is worth noting that the current territory-owned corporations legislation has a similar requirement in relation to directions that are given to territory-owned corporations where they may have to incur additional cost.

Ms Ekelund: That was a bit of a recap of material which we have briefed you about before.

THE CHAIR: And you have all read this last night, haven't you?

MS GALLAGHER: I have read the explanatory memorandum.

MS DUNDAS: The detail is in the detail.

THE CHAIR: You have done better than I have.

Ms Ekelund: We are conscious that you haven't had access to it for a long period of time, but this gives us an opportunity to just quickly run through what is in the consequential amendments bill. Most of the changes are, as you would expect, to the land act, but there are some minor amendments to other acts and regulations.

The underlying principle is to maintain the power of the Assembly, the executive and the minister for broad policy setting, as per the main bill. The powers and functions relating to policy setting remain, therefore, with the government, the Assembly and the minister, but the functions relating to implementing policy are transferred from the minister to the Planning and Land Authority, and that is the main thrust of the amendments.

Some executive functions are also transferred to the authority—for example, draft Territory Plan variations would be prepared by the authority and submitted to the minister rather than the executive. Actually, that is a little bit confusing. What I meant to say is that there are some changes from the executive to the minister, just to clarify how the Territory Plan variation process functions.

THE CHAIR: Seeing that that is so close to our heart, what are the differences?

Ms Ekelund: The differences are, before we go through various processes in the Territory Plan variation process, rather than having to get the executive to sign off on a process, now only the minister has to sign off to those mechanical parts of the Territory Plan variation process.

Mr Corbell: Basically, it means that I do not have to go next door and get a signature from one of my colleagues.

Ms Ekelund: Essentially, variation is a policy and therefore will continue to be a matter for government agreement and Assembly approval towards the end of the process, so it is just earlier in the process that it is the minister that ticks off things rather than the executive, but all the mechanics are administered by the authority itself.

Provisions relating to the Commissioner for Land and Planning are repealed, and I guess we stress that COMLAP is a decision maker, not a reviewer. This has been a matter of some confusion. Therefore, there are no appeal rights that are affected by this change whatsoever. The minister's direction powers are amended to reflect the power in the Planning and Land Bill but, essentially, those powers to direct are substantively not changed.

With respect to the call-in powers, the transparency and accountability mechanisms of the call-in powers are strengthened. There is a clear notice of intent to exercise power, which is a notifiable instrument, and the minister must consider the advice of both the authority and the council. Currently, legislation does not put specific requirements on the minister to do that.

This is a new element that has come into the land act, but we have certainly spoken about this very broadly. We have flagged it with your committee but also with the private sector and community groups. We are proposing to introduce an element which is very similar to what exists in New South Wales, that is, the authority will have the power—in fact, the minister, if it is by way of a call-in, will have the power—to reconsider its own decision on a DA. We have now deliberately used the word "reconsider". It is not a review function, per se. It is really an ability for the authority to step in and resolve an issue by making a new decision on a development approval if there are some adjustments that—

THE CHAIR: So this is a mediating process.

Ms Ekelund: It can be used as mediating. At the moment, once a decision is made, you can only change the decision if it is a very minor amendment and you cannot change anything that is a condition of approval. Say we approved something that you had to paint a fence white. If they wanted to do it grey, blue or something else, even though it is only minor, if it changes the effect of the condition, we are hamstrung.

This is really an ability to mediate where a proponent has been able to resolve issues with either the determining authority or objectors and we believe that it will end up in better outcomes and will benefit the community, objectors and applicants without having to go through the formal appeals process. Again we stress that it does not affect the appeal rights at all and people, if they are still dissatisfied with an outcome, will have the same ability to go to the AAT, so it is not affected by the reconsideration powers at all.

If I can just mention that New South Wales has reviewed the Land and Environment Court operations and is actually introducing a bill at the moment. Forgive me if I mentioned this to you last time, but it is introducing provisions to enable an applicant to have 12 months in which to seek a reconsideration because it sees it as such a useful tool for local councils, the development industry and objectors to resolve issues outside the court system. We are not proposing to go that far; we are still only proposing to have a 28-day period within which a proponent can seek reconsideration.

The applicant has to ask the authority for reconsideration and they have to set out the reasons why they want reconsideration. Any person who objected to the original application will be given an opportunity to comment on any proposed changes and, again, that reflects the practice in New South Wales. They will also be advised of the outcome of any reconsideration.

On other parts of the land act, essentially, part 3, heritage, is not substantively changed, but we note that there are proposed changes to legislation for heritage under way. Under part 4, environmental assessment, the environment minister administers that part, so we have inserted a provision to enable the environment minister to delegate functions to the authority so it can be administered in pretty well the same way it is at the moment. Part 6, orders and approvals. is not being substantially amended by this bill, but we note that there is a separate bill under way to deal with changes to the enforcement process to make it a bit easier to administer.

On the new appeals process, policy changes have now been agreed by government and an AAT amendment bill is currently being drafted. The key elements of that are that there is going to be an object again placed to set the framework for which the AAT act is to operate and there is also a specific object for the operation of the land and planning division. Essentially, the changes provide for improved provisions for mediation and compel the division to consider mediation in all cases.

Expert panel members can be used at the moment, but there is going to a greater emphasis on the use of that broader range of expertise. There is a time target for decisions to be put into the act, so that the division of the AAT dealing with planning and land matters will seek to make decisions much more quickly than it does at the moment. That reflects what we saw in the Tasmanian situation. We will also be introducing the ability to award costs, but only under limited circumstances. They are essentially about where stakeholders do not follow proceedings and that results in delays in proceedings and therefore costs to other stakeholders in the process.

There are also planning and land regulations. Those regulations provide for what matters are to be referred to the Planning and Land Council. They, as I mentioned before, are about significant matters in relation to changes to planning policy and whether there is a matter that comes up which raises a significant policy issue or a policy interpretation issue, or something that has a substantial impact on a locality. Examples are Territory Plan variations, the strategic spatial plan for Canberra, neighbourhood plans, master plans, the urban development program and significant development proposals for construction or leasing.

That is essentially it. Again, that is just a diagram that sets out the government structure. Sorry, it probably took a bit longer than anticipated.

Mr Corbell: Thank you.

MS DUNDAS: I have a really quick question. During this week, the Assembly made some changes to the current land act with Ms Tucker's amendments regarding minor provisions. Do they need to be incorporated into this new legislation?

Mr Corbell: I think Mr Snell can answer your question.

Mr Snell: Ms Tucker's bill was partly accommodated by the consequential amendments bill; so, following the passage of that bill yesterday, there will be a minor amendment to the consequential amendments bill required, just the deletion of one paragraph. The consequential amendments bill currently provides for the notification of objectors when there is a minor amendment to an approval. That having been done yesterday, we will delete it from the bill.

THE CHAIR: From our point of view, Minister, the timetable is very tight. You made some undertakings yesterday about providing us with—-correct me if I am wrong—an exposure draft of the appeals process and some indicative regulations. When are we likely to see those? Also, it needs to be said that there are people in the community who have views about this and will be appearing before us who probably need to inform themselves about that so that they can express their views.

Mr Corbell: I anticipate, in accordance with the government's decision on changes to the AAT and the appeals process, that that exposure draft will be available by the end of this month, so hopefully some time next week.

THE CHAIR: Okay, so that is next Monday, which is the end of the month.

Mr Corbell: Yes. It may be slightly into October, but that is the decision the government took when it agreed to the draft of the legislation. We will endeavour to make sure that that is met. In relation to the regulations, perhaps I could ask somebody who knows.

Mr Snell: We can provide those today. We can provide an outline.

THE CHAIR: Will that be a full set of regulations? I thought you said yesterday, Minister, that it would be an indicative draft.

Mr Corbell: It will be an indicative draft. It is important to stress that the regulations, essentially, deal with those matters which the government would intend to refer to the Planning and Land Council for advice and require the Planning and Land Council to give advice. Ms Ekelund has already outlined the sorts of matters. The regulations, essentially, will give effect to that, as I understand it.

Ms Ekelund: Maybe early next week, because we need to run them through the minister's office.

THE CHAIR: You do not have to do it in dribs and drabs, just so long as we get them. Rather than sending one thing to Derek one day and another the next day, send them all together, but send them to Derek, not to me, because I will not be here for most of next week.

Mr Corbell: We are happy to do that.

THE CHAIR: Derek can get them around and about. I suppose there is a philosophical question that goes back to the beginning. Minister, you talked about it as an independent Planning and Land Authority, but much of what you say seems to indicate to me that it isn't, really. I think Ms Dundas has expressed a similar view.

Have you changed your thinking since before the election and now about the actual independence of this body? When people talk about an independent anything, there is a sense that it is to some extent sufficient unto itself in the setting of its objectives and things like that, that you give it the structure, wind it up and it goes along, but there is increasing emphasis on the fact that the policy-making decisions are still being made by the minister, the executive and the Assembly and there seems to be tension there. I am just wondering whether you feel that you have actually moved along the spectrum from really independent in the pre-election phase to something which is more middle-of-the-road now.

Mr Corbell: No, I don't believe I have. The Labor Party's planning policy spelt out what we believed should be the purpose of an independent planning authority, which was to independently administer the planning law. But the planning policy itself, if I recollect it correctly, released before the elections stated—again, I will double-check, but, if I recollect correctly—that policy making would be the responsibility of the government of the day and the Assembly of the day.

Yes, it is true that, if you wanted to have a completely independent authority, it would also have full responsibility for decision making on planning policy. But I don't believe—certainly, we stated this before the election as well—that in a self-governing territory with a democratically-elected legislature and a democratically-elected government, matters of policy should be determined by an independent statutory body.

In many respects, the decision-making powers of this organisation, the Planning and Land Authority, are in relation to the implementation of the planning law. In that respect, it is no different from other independent statutory bodies, such as the Gambling and Racing Commission. The Assembly makes the law in relation to gambling and racing and the commission independently implements it. It is no different with this.

THE CHAIR: I think I have actually used the example of the Gambling and Racing Commission in the past, so we are in agreement there. But one of the things about the Gambling and Racing Commission is that, in a sense, it does not advise the government.

Mr Corbell: That is true.

THE CHAIR: From my experience, the ministerial relationship with Planning and Land Management is very much that of a minister-public service arrangement where Planning and Land Management advises the minister for the most part and there are other ways of doing it, exceptions to that, whereas the relationship between the Gambling and Racing Commission, or even the chief executive of the Gambling and Racing Commission, and the minister is not that relationship. Are you proposing in this structure that the relationship will remain substantially like the relationship between you and PALM or that it will move to something which is more like the relationship between the Gambling and Racing Commission and the Treasurer?

Mr Corbell: I think this model is a hybrid to that extent in that the Gambling and Racing Commission doesn't have any policy-making capacity, really, whereas the policy-making capacity—that is, the people with the understanding of the planning law and the planning provisions—is there to advise government on how they can potentially be implemented or what sorts of issues need to be considered and addressed. So there is a hybrid in that regard.

THE CHAIR: You see it as a hybrid.

Mr Corbell: Yes, and I think it is a workable one because at the end of the day, in terms of one of the government's key aims, which is to improve community confidence in the planning process, once a decision is made, I want and the government wants the community to feel that the implementation of that policy is being conducted in a way which is not subject to any potential, perceived or real interference by political masters. That is the significant improvement we are trying to achieve here.

THE CHAIR: Do you think you could specify—if it hasn't been clearly thought out, I understand—the sort of access that the Assembly will have to advice directly from the Planning and Land Authority? If I want to, I can ring the chief executive of the Gambling and Racing Commission and say, "I've come across this. How do you think this would work?" That is his role. It is not his role to advise the Treasurer. Will a member of the Assembly have that capacity in this hybrid? If so, where do you think there might be a conflict of interest—sorry, not so much a conflict of interest, but a sense of being a servant of two masters?

Mr Corbell: The authority doesn't report to the Assembly; it reports to the executive.

THE CHAIR: So that will be the difference in the structure?

Mr Corbell: Indeed.

THE CHAIR: I am not picking on the Gambling and Racing Commission; it is just because it is one that I know fairly well.

Mr Corbell: No. But, in comparison with some other statutory authorities that report to the Assembly and, equally, in comparison with some existing statutory authorities that already report to the executive, this statutory authority will report to the executive.

MS DUNDAS: That is the authority, but what about the Planning and Land Council?

Mr Corbell: The council is constituted under the act and appointed by the minister and reports to the minister in terms of its annual operations, but it is there to advise both the executive and the Assembly. If I can just answer Mrs Dunne's question first, Ms Dundas, and then I will be happy to come to you.

Mrs Dunne, you were asking about the sort of access members will have and how it is going to be managed. I certainly envisage that, for instance, this committee would be able to call on either the chief planning executive on behalf of the authority or potentially the chair of the Planning and Land Council to give advice from their perspective on issues that were currently before the committee for its consideration.

For example, if the government submitted to you a variation to the Territory Plan which you felt was contentious, you could seek the advice of the authority and/or the council to get their views on that variation, and they would be able to provide you with their views on that. Their views may not be in accord with the view that the government has taken, and they would be free to express that because that is one element of their statutory independence which I think is very important.

The distinction is at what stage these things happen. I think the issue is, whilst the government is considering a policy matter, the authority should probably exercise some discretion about what sort of information it provides to people outside of government until the government has reached a decision. Once the government has reached a policy decision, then I think the authority and the council should be free to provide their view on the adequacy or otherwise of those proposals. It will require some judgment on the part of the chief planning executive, but I do not believe that it is by any means a complex or difficult process.

THE CHAIR: On the contrary, there seems to be a slightly tendentious dichotomy, because what is happening is that the body of people who prepare draft variations to the Territory Plan, for instance—Mr Calnan and his group of people—would be advising the government along a particular course. The government may or may not take up that advice. I presume that there would be some scope for changing a draft variation in that consultation phase between, say, Mr Calnan's area and the executive, but it seems to me that if the people drafting a variation said, "Let's go down this path" and the executive said, "No, let's go down another path" and then the matter came to this august body, which said that it was not sure about it and called in the people who drafted the draft variation and said, "Now give us your free and frank views", it is going to be very difficult for the group of individuals who have just been countermanded, rolled, had their views prevailed upon by the executive to come along and say, "Well, we were rolled by the executive and really think it is a dumb idea." That is an extreme case.

Mr Corbell: I disagree. It is important to remember the status of the staff of the authority. They are staff of the authority and they are responsible, not to me, not to the minister, but to the chief planning executive. I think that is a very important distinction. They are not reporting to me. They are reporting to the chief planning executive, and it is the chief planning executive's responsibility, which is a statutory appointment, to provide me with advice on issues such as variations to the Territory Plan as well as having direct responsibility to administer the implementation aspects, if you like, of the Planning and Land Bill and the consequential amendments to the land act.

THE CHAIR: The chief planning executive is the conduit through which all of this comes.

Mr Corbell: Yes, that person is the authority.

THE CHAIR: If this body had concerns about any draft variation that came before it, would it be the chief planning executive who would be giving us the free and frank advice or would it be his staff, essentially?

Mr Corbell: You would make an approach to the authority, who is the chief planning executive, and it would be the authority's decision—that is, the chief planning executive's decision—as to who or what would be made available.

MS DUNDAS: I was asking about the Assembly's access to the Planning and Land Council and the expert advice that would be there.

Mr Corbell: All advice that the Planning and Land Council provides to the minister in relation to a decision to call in a development application, to use that example, will be made publicly available. Indeed, all the deliberations of the Planning and Land Council are proposed to be publicly available.

MS DUNDAS: Within what time frame?

Mr Corbell: I am not sure whether that detail has been worked out, but it will be a public process.

Ms Ekelund: It depends on the item. Normally, it should be minuted and be publicly available, but the details of how it would operate we haven't determined.

Mr Corbell: All the Planning and Land Council's deliberations are to be publicly available. That is the first point to make. Secondly, members or this committee could seek to meet with and seek the views of the Planning and Land Council on different issues that the government is putting forward.

MS DUNDAS: We would have free and open access to that body of experts almost independently of going through your office.

Mr Corbell: I think there would still be the courtesy that the minister would need to be advised, but that is about where it ends. The minister could not deny you access, but the minister should always be aware of an approach and the approach should be managed through the minister's office, but that is really a courtesy more than anything else.

THE CHAIR: Just to explore that a little on the subject of, say, a call-in, there are more players in that than just the person making the decision and the person advising. There are proponents and opponents, all of whom have a view and tend to be out and about in the community getting into the ear of various people. If, for example, someone came to me and said, "This is a very important project. For these reasons, we think it should be called in"—this is to me as a member of the Assembly, not as a decision maker—could I as an individual member have access to the Planning and Land Council for their views? If there were a debate afoot and perhaps you were in the process of making a decision as

the minister, could an individual member have access to the Planning and Land Council, or would they have to wait until you had deliberated and made your decision as the minister?

Mr Corbell: I think it is important to establish the primacy of the roles of the council. First and foremost, the council would have statutory requirements to give advice on certain matters to the minister or the government of the day and, clearly, the council would have to consider those requests as its first priority. In the instance that you outlined of the potential exercise of the call-in power, I think the council in the first instance would say, "Our statutory responsibility is to provide advice to the minister on the exercise of the call-in and we will make that advice publicly available once we have given it." Indeed, the minister would be required to do so as well under the provisions of the consequential amendments bill.

What I am trying to say is that the role of the council is to perform its functions as set out under the act. It is not really meant to be a sounding board that all and everyone can go to on any particular issue they have an interest in. It has statutory responsibilities under the act and it is publicly available in accordance with its statutory responsibilities. If you want to get advice from the Planning and Land Council or understand better its rationale behind a particular piece of advice, you can go to the council and say, "Can you please explain this?" The chair of the council or whoever can provide that.

THE CHAIR: Yes, but I could not necessarily go to that organisation as a means of clarifying my own views or as an individual to clarify their own views as a means of having an informed debate.

Mr Corbell: It would depend on the issue. That is what I am trying to say. If it were about a draft variation to the Territory Plan, yes. If it were an issue around a master plan, yes. But if it were just a particular development application down the road that a constituent had raised with you, which they were unhappy about and which was not the sort of application that would fall within the bounds of the council making a decision on, then no.

THE CHAIR: Yes, that is fair enough, but if it were the sort of thing on which the council had a statutory requirement to have a position—

Mr Corbell: To give advice on, I should say, yes.

THE CHAIR: Yes, to give advice on, would a member then have access to that advice in a timely fashion or would that be dictated by a ministerial decision-making process? Would you be able to participate in a peripheral sense in the decision-making process or be aware of what the decision-making process is as it is going on or do you only actually find out afterwards?

Mr Corbell: First and foremost, the council has to undertake its statutory responsibilities, which is to advise the government or the minister of the day on issues that the government has requested the council to give advice. That has to be the highest order of priority. What I think I am trying to say, Madam Chair, is that in a circumstance where the council has been asked to give advice on the potential exercise of a call-in, and at the same time you or another member approaches the council and asks for its view on

the exercise of this call-in, I would envisage that the council would say, "The minister has asked us for advice on that. We will provide that advice to the minister first, because that is our statutory responsibility, and then we will be happy to talk to you and explain the rationale behind our advice."

MS GALLAGHER: In terms of a call-in, from my understanding of it, the first I know about it is when I read in the paper that the minister has used his call-in power. Does this mean you have to seek advice? If it goes to the council, it would be fairly public, wouldn't it, that you were seeking advice? Would that mean that people would have noticed that you had it in your head that you might be going to use your call-in power?

Mr Corbell: Dorte will correct me if I am wrong, but, as I understand it, that is correct, in that I give to the authority a notice of intention that I may—or the minister does, I should say—be considering to exercise the call-in. That is basically a flag, if you like, to the authority to say, "Don't make a decision on this. The minister may want to make a decision on this application." And that is a notifiable instrument, is that correct?

Ms Ekelund: The intention to call-in is notifiable, yes.

THE CHAIR: But that is not currently the case.

Ms Ekelund: No.

Mr Corbell: At the moment, the first you know of it is when I issue a press release on it, basically.

THE CHAIR: Unless you are well informed.

Mr Corbell: Unless you are well informed, that is right, so there is a formal requirement that the minister flag the intention to consider the use of the power. That is a flag to the authority not to make the decision but to provide the minister with all the relevant information and then the process gets under way for the council also to provide advice and then the minister decides whether or not to exercise the power.

THE CHAIR: In a sense, though, in fairness, Minister, that is a slightly artificial construct because often as the minister, being that one step removed from the functions of the authority, you are not actually going to know that something may need to be called in until the authority tells you that it may need to be called in.

Mr Corbell: No, not at all.

THE CHAIR: How is it going to change?

Mr Corbell: I do not know what the experience of the Liberal Party was in government, but I envisage that it was probably pretty similar to mine in that, if a proponent is keen to have a development application called-in, they don't go through PALM, they come straight to me. Equally, I have had circumstances recently where objectors have come to me and said, "We want you to call in and reject that application." The exercise of the call-in power is, essentially, political; it is an exercise of political power.

THE CHAIR: Yes, there is no doubt about that.

Mr Corbell: Therefore, people approach the political decision maker direct very, very often.

Ms Ekelund: If I could add to that, Madam Chair: as the former head of the development management branch, I had a very strong view that it was inappropriate for the public service to recommend to an elected representative when they should use the call-in power. This legislation is constructed so that if something is of such significance that it becomes a political and, in effect, a policy issue, then a minister will know about it through these various avenues. If it is not of such significance that it becomes a policy issue, then it is appropriate that it be dealt with through the normal administration through the authority. We did discuss in some detail how the minister finds out about something and we concluded that, because it becomes a policy/political issue, there are ways in which that will happen without the authority having to provide formal advice about proposals.

Mr Corbell: Certainly in both instances that I have exercised the call-in power since I have been minister, I have been approached directly by the proponents.

MS GALLAGHER: I have a question in terms of the authority's ability to reconsider its decisions, so it is probably for you, Dorte. I am just wondering how it works and how it would be different from just going through the thing twice. Does it mean that, if someone has an unfavourable outcome, they take into consideration what the authority said, change what they are proposing and then resubmit it, or can they just resubmit the same thing? Does a different group of people consider it? I am just wondering why it would be different.

Ms Ekelund: Originally, we had intended that the same delegate or whoever could consider the proposal again, even if it hasn't changed. A proponent could say that they would like us to reconsider it and argue the case a bit more strongly or they may have gained support from the objectors. It might be the same proposal, but they might have put in some information that they didn't have before—for example, a traffic impact study. If they hadn't produced a piece of information or evidence like that and they provided more information, maybe a different decision could be made on the same proposals. The consequentials introduce a requirement for a different delegate to make the decision. It enables a person to say that they want a second opinion on the same proposal.

THE CHAIR: It is not quite a review.

Ms Ekelund: It is not quite a review, no. That is why, as I mentioned, we are calling it a reconsideration. We had fairly strong advice that using a different delegate will help to make sure that the process is as transparent and accountable as possible. But, as I've said, it can be the same proposal but with more information and arguments submitted with it or a change in mind of the objectors or whatever, or it can be some adjustments to the proposal.

THE CHAIR: Just on that subject: for the only mildly initiated, if somebody comes to you with a development application and you are the delegate and you are looking at it and looking at the objections, is there scope at that stage, before you make, a decision to mediate? As things currently stand, can you sit there and say that, if they shift a window or change the setback a bit, that might solve their problem? Can that happen now?

Ms Ekelund: It can currently happen. It does currently happen. What sometimes complicates that, because clearly in this scenario an objector is involved, is that the commissioner may not share the same view as the case manager within Planning and Land Management. But we would envisage under the new structure, where the authority is the case manager for the whole process, that it will have the ability to undertake more mediation between proponents and objectors and it will know who the decision maker is going to be and what is in the decision maker's mind. The delegate might be a more senior person or that more senior person may well be involved in this mediation process, so that mediation process could happen internally during the process. There is nothing to stop professional mediators being involved, but that probably would not be required in most cases.

THE CHAIR: Yes, but what you are actually saying is that mediation, in a sense, will be more meaningful when the decision is finally made, because the decision is finally made within the authority rather than by another authority, which is the case with COMLAP, which is, as you rightly say, misunderstood and fraught with problems.

Ms Ekelund: Yes, that is right. I guess I would like to stress that, whilst mediation is really important so that you can hopefully get a win/win situation, planning outcomes and the best planning outcomes, of course, will be at the forefront of the objective and a compromise isn't always the best planning outcome. It does not mean that mediation would always result in a compromise.

THE CHAIR: Splitting the difference isn't always the way to go.

Ms Ekelund: Yes.

THE CHAIR: We have just about run out of time. Is there anything that is really pressing at this stage? Thank you, Minister. We will have a fairly heavy schedule in trying to come to terms with this and accommodate the fact that some members have other responsibilities and other commitments over this time. We may find it necessary to come back to you or perhaps have the officers back or we may end up with a lengthy series of questions or something like that.

Mr Corbell: We are very happy to facilitate that.

THE CHAIR: Thank you very much.

The committee adjourned at 10.32 am.