



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**(Reference: Auditor-General's report No 2 of 2005)**

**Members:**

**MR R MULCAHY (The Chair)**  
**DR D FOSKEY (The Deputy Chair)**  
**MS K MACDONALD**

**PROOF TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 7 DECEMBER 2005**

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**Secretary to the committee:**  
**Ms A Cullen (Ph: 6205 0136)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

**The committee met at 3.10 pm.**

**ROBERT WINNEL,**

**TERRY SHAW** and

**KENNETH INESON**

were called.

**THE CHAIR:** This is a public hearing pursuant to Auditor-General's report No 2 of 2005, relating to the development application and approval process. For the benefit of the witnesses, I point out that these proceedings are being broadcast and telecast and there will be a Hansard record of this hearing.

I need to advise you that you should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. On the first occasion you speak, please state for the record your name and the capacity in which you appear. There is no need to do so subsequently.

Mr Winnel, we have your submission and revisions to your submission, as outlined in correspondence that has just been presented. Would you or any of your colleagues like to make a statement to the committee? After you have spoken, I will invite members of the committee to raise any questions they have.

**Mr Winnel:** My name is Bob Winnel. I am chief executive of the Village Building Company. Perhaps we could get each of the two people who have come with me to run through certain of these six items, beginning with the Planning and Land Council. We question the Planning and Land Council because we believe that it has just a duplicating role. We cannot understand why the system does not put more store in the views within ACTPLA when it comes to planning matters. Every time you get a new architect you will get a new set of views and, following the setting up of the Planning and Land Council, we have had some pretty vociferous views put forward by that body on issues on which we have actually negotiated a reasonable outcome with ACTPLA. Terry Shaw might elaborate on that first item and Ken Ineson might speak to item six.

**Mr Shaw:** My name is Terry Shaw. I am ACT project manager for the Village Building Company. Just to expand on Bob's point relating to the Planning and Land Council, our experience on a couple of projects we have had that have been presented to the Planning and Land Council is that we believe that the DA process already involves sufficient planning expertise from within ACTPLA and also from the planning and architectural consultants that the developers engage to prepare their designs, and also the knowledge that many of the developers have within their own organisations. Our feeling is that the Planning and Land Council just adds another layer, an unnecessary layer, to the DA process and we think that there is sufficient knowledge within ACTPLA to adequately assess applications. I am unaware of any other planning jurisdictions that have such an

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expert reference group that major DAs are referred to.

**THE CHAIR:** Are you advocating that the Planning and Land Council does not fulfil a useful purpose; is that in summation what you are saying?

**Mr Shaw:** Yes.

**Mr Winnel:** You can get any number of professional layers and each will take a slightly different perspective; that is their independent professionalism. We are questioning why there are so many layers, because you have a number of layers within ACTPLA. ACTPLA is not just referenced to one person and one professional view. We start with our own internal professionals. We have planners in house and we have architects as consultants. It goes through those and it goes through a combined committee process within our company, then it goes to ACTPLA and it goes through layers there. Then, having done all that, the government says that that is not good enough, that it must go to an expert committee.

We are saying that that expert committee is no more expert than the process that it has already been through. Sure, it is another layer, but we believe that it does not actually add anything to the process other than it extends the time frame for working through and it adds another opinion. But the number of opinions that had already oversighted the development of the DA proposal and its processing to date would seem to us to be adequate.

**DR FOSKEY:** I wish to make a comment in defence of the Planning and Land Council. It is, so far as I can see, the only place where the process actually becomes a bit transparent, because Planning and Land Council minutes are on the net and we know what they think. I think that they are a bit inadequate, but they are there. Given that there is very little community consultation now on things, that is a place where that can happen. There has been a number of times when the minister has called in developments and where the Planning and Land Council's report has contraindicated that.

From your perspective, that might be seen as unhelpful but, with the planning reforms proposed, it worries me to hear you because I fear that the Planning and Land Council is seen as a nuisance by government as well. Especially in the face of planning reform, I would like to defend it because I think that a lot of the things that you are concerned about will be helped by planning reform and the Planning and Land Council provides one place left for the community. I think that you know that this community likes to have a say on planning. Whether we like it or not, that is the way it is. I just wanted to put that point of view as a community representative.

**Mr Shaw:** Just on that point, if we are to work with the Planning and Land Council, and we probably will be, I think that one of the improvements that could be made would be if on major projects the developer were able to have a representative at the meeting to present the project. The current process is that the projects are presented by the ACTPLA officer and we have had direct experience on one of our projects of that resulting in some misleading or ill-informed opinions or suggestions being put forward by the council. Had the council had the benefit of the developer being able to further elaborate on the proposal and some of the constraints on the project or the site which resulted in the design and siting that we had put forward, those comments would not have been made

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and the comments probably would have been more helpful.

**DR FOSKEY:** I think that is a very valid point because, as you say, your ideas have been through several iterations by the time the project gets presented by someone else. It makes sense to do it yourself.

**Mr Winnel:** And they are interpreting our work to the committee. Of course they have to be there because ACTPLA are the people that are making the judgments and determining whether you meet the criteria. Of course they have to be there and, if they disagree with us, of course they are going to tell the committee that. The problem is, in terms of transparency, that our work is presented by somebody else to this committee. We are not there to hear what they have to say and then we get comments coming out that do not seem consistent.

**MS MacDONALD:** And you are not there to answer questions on why you have designed something in a certain way.

**Mr Shaw:** Yes, that is right.

**DR FOSKEY:** Also, the feedback could be quite useful to you.

**Mr Winnel:** I think that it is a two-way process: the feedback from the committee as to why they are making their comments, but also before they make a comment they might want to ask a few questions leading up to it and they might find our answers to be helpful in understanding the proposal in front of them.

**THE CHAIR:** I am aware that you have projects in New South Wales and Queensland. Do you have anything to contend with in those two jurisdictions that would equate to this council?

**Mr Winnel:** No.

**THE CHAIR:** What has been your experience of the relative processes of planning in those areas compared with the ACT?

**Mr Winnel:** It is really hard to generalise because it is not the systems that are the most important thing; it is the attitudes of the people that are administering the systems. People think it is the system and the answer to achieving a better outcome is always more reform. I have never had that view. I think that the system is only one element. It is the people operating it. I think, to give an honest answer to your question, that it does not depend so much on the system as on the attitude of the people operating it.

There have been times in Wollongong, for example, where we have been very frustrated, and in the same process most of the time we have been very happy with the way that they question our work, make their decisions and move on. I do not actually think it is the system. I think that it is an attitude to development. Development is just so controversial. In every community, development is controversial and the cry always is that there is no enough public consultation but, for example, in the DA process there are public processes; there is an opportunity for people to comment.

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We find that if there is no end to the public comment in any system, if the view of people is that it has always been inadequate and there should be more of it, then it is an entirely frustrating process. If the comment is received and dealt with, amendments are made in accordance with council officers' recommendations and we have an input, as the community does, and you move on, that is one thing. It is the insistence always that there is inadequate community consultation. The other thing is that it is not the system that causes most of the delays. Again, whether it is resources or whether it is the attitude of people and the administration, the time frames that they take are not usually to do with the system. They are to do with the people administering it.

**MS MacDONALD:** Is that a comment across the country in your experience or is it a comment specifically for the ACT?

**Mr Winnel:** I think that is across it. In most areas we have been to, the first thing we have had to do is spend a couple of years changing their regulations, pointing out to them that they are behind the times. Lots of communities in the early 1990s, for example, had not dealt with courtyard lots, villa lots; they had not dealt with the new trends in housing to reflect the household formation. So we have had to spend time solving the bigger problem, that is, having the whole debate on what it should mean to be getting in the middle of that, which is pretty messy because there are always the views which I suppose you would call community views but I would call some of them activist views that are strongly opposed to any change to anything that is happening. But once you get through that and they have fixed the system, the process depends on the attitude of people to timing and whether they think that the development industry has a legitimate right to fair treatment. It depends on their attitude to whether there is any end to the public consultation process, whether there is a point where you rule it off. But those same issues exist in Wollongong. They exist in Pine River shire. It is universal.

**THE CHAIR:** We have had evidence from the Housing Industry Association and from an individual witness to the effect that there was a culture within ACTPLA that contributed to the problem. It seems from what you are saying that that culture of possibly obstruction, resistance or reticence to make decisions is not confined to the ACT. Is that what you are saying?

**Mr Winnel:** It is almost a planning culture because of the political environment that planning departments operate in, where they become afraid to make decisions because they do not really know what is going to happen when they make those. I think that there is basically in planning generally across the country a lack of support for the decisions when they are made.

**THE CHAIR:** Do you see in the ACT greater costs than elsewhere because of the delays? Are the delays drawn out longer either because people object more vigorously here or because there is more reticence?

**Mr Winnel:** Again, we could not say universally yes or universally no. With some of the other issues that Terry will cover, we have tried to identify particular parts of the process where we just think that it could be expedited somewhat. You take three years to get a change to the territory plan. On Northbourne Avenue there is an old fairground that has been closed for donkey's years and it is not going to reopen as a fairground. The housing has crept up to it. The changes to the territory plan have crept along Northbourne

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Avenue, Canberra has grown a lot, and you get to that site and you approach them, and it is not like you are meeting a big negativity.

**MS MacDONALD:** People do not like change?

**Mr Winnel:** I do not even know if it is. Terry, do you want to comment?

**Mr Shaw:** I would say that perhaps it is more about the culture of just not wanting to make decisions. With the heritage village site that Bob is talking to, we initially approached ACTPLA in March 2003, representing the owners of that site, who wanted to consider a variation to the territory plan to make it residential, or to permit residential development. At that point in time the spatial plan was in progress, or had just commenced, and the response was that the spatial plan and an urban edge study which was also under way would provide input to their decision and would inform their decision on what we were proposing and that they would prefer to wait until that spatial plan had been concluded before they made a decision.

**THE CHAIR:** What has happened since?

**Mr Shaw:** Thirteen months later, the spatial plan was finished. We then prepared a detailed planning study which we submitted about 12 months after that; sorry, the spatial plan was launched in March 2004 and we submitted a planning study in January 2005. Six months later that project was presented to the Planning and Land Council. We were given verbal advice that public notification of the planning study for the territory plan variation would occur in the second half of this year. That still has not happened. It is likely that it will happen in January.

**THE CHAIR:** Do they give you any explanation for these incredible delays? Has anyone offered you a reasonable explanation?

**Mr Shaw:** Yes. Once we submitted the planning study in January, ACTPLA had to circulate that planning study to all the government stakeholders and other agencies and get comments back from those agencies. They had comments back from all the agencies except Environment ACT. Environment ACT—I would have to check my facts—took significantly longer than the other agencies to get back, so nothing happened.

**THE CHAIR:** We are here nearly a year later and you are still sitting on your hands on this plan.

**Mr Shaw:** Yes. What is going to happen is that it will be nearly three years. It will be three years from when we first approached ACTPLA to when we are likely to get a variation process.

**THE CHAIR:** Who is holding the land at the moment?

**Mr Winnel:** A joint venture partner of ours.

**THE CHAIR:** Is somebody wearing holding costs while all this goes on?

**Mr Winnel:** The landowner and ourselves, I guess. This project is also going to involve

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some government land, isn't it, this proposition?

**Mr Shaw:** Yes.

**Mr Winnel:** Those negotiations haven't concluded, have they?

**Mr Shaw:** No.

**Mr Winnel:** There is a bit of government land that is not really usable and we are negotiating to incorporate it in what we are doing.

**THE CHAIR:** It just seems an incredible amount of time. Mr Shaw, do you have more points to make? I know that you were going to get Mr Ineson to raise some issues and I am conscious of the time.

**Mr Shaw:** Okay. I would just like to add that in recent months we have made an approach to ACTPLA about that particular project and I guess we have been encouraged by some of the comments that have been coming back, including that they came up with the idea that we could actually prepare a DA concurrently with the territory plan variation going through; so they are offering now ideas as to how we can save some time.

**THE CHAIR:** It sounds like they were badly stalled because of environment's failure to respond in a timely fashion.

**Mr Shaw:** I think there was probably stalling there and also stalling within ACTPLA itself early on.

**THE CHAIR:** Thanks for that information. Do you want to expand a bit on the submission?

**Mr Ineson:** Yes. My name is Ken Ineson. I am general manager of the Village Building Company. My issue is quite different. My issue relates to mandatory conditions associated with rural land development projects. Quite often, mandatory conditions will be set in deeds of agreement when land is sold at auction or joint ventures are entered into and that has been quite restrictive. It has in the past had quite a significant effect on the value of the land.

**THE CHAIR:** Can you indicate for our benefit the sorts of conditions?

**Mr Ineson:** For example, mandatory requirements for rear lanes. Examples of those can be seen in Gungahlin, Harrison and other areas.

**Mr Winnel:** Which we think were really unfortunate mandatory requirements, which we resisted quite strenuously through the consultation process with industry. One of the problems we find is that resisting proposed changes does not always win you friends. We like to take part in the policy debate but we like to do so without paying the cost of being alienated from government as a result of giving contrary views. We found, for example, once we started putting those views in when the Gungahlin Development Authority was in existence that our relationship with them became non-existent. We felt it was

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unfortunate that you could not disagree with a government authority and put a view through the industry consultation processes without finding that your relationship somehow was affected.

**MS MacDONALD:** Do you think that that is still the case?

**Mr Winnel:** They are gone and there is a new authority. The one thing we noticed when we first wrote to come to the committee and what we have been observing is that a lot of these mandatory impositions seem to have been dramatically diminishing in recent times. We think that is quite an encouraging move forward. We suspect the reason that that has occurred is really quite simple. We used to do lots of joint ventures with the ACT government and when we ran into a problem where we thought that there was a mandatory condition which was not giving any public benefit but which had an enormous public price tag our view was simple: if, by having houses on one side of a road instead of both, you are costing ACT revenue \$2 million, that is coming out of schools and hospitals, so you should look carefully at whether the policy is giving you a public benefit. We often found no evidence of any public benefit, but rather that it was a whim of someone within the planning bureaucracy that it would be much better if whatever the outcome was.

**Mr Ineson:** A real example of that would be Nicholls Lakeside Estate, where there were pretty significant constraints in terms of edge roads; in other words, roads with development only on one side and open space and park on the other. We did a financial feasibility of that development and presented figures to ACTPLA—I think it was ACTPLA—at that time. We were offered the entire site, 150 lots, for \$28,000 in order to achieve that planning benefit.

**Mr Winnel:** In handwriting from a planner.

**Mr Ineson:** We then went to our joint venture partner, the ACT government, and explained that if you got rid of those mandatory conditions and introduced sensible planning constraints you could achieve revenue of over \$2 million. That is how the project actually proceeded and it is quite a reasonable planning outcome.

**THE CHAIR:** The lanes you talked about, to pick up one of your examples, what was the rationale for those?

**Mr Winnel:** That was an issue where the planners got hooked on and are still to some extent hooked on this new urbanism, where they talk about legibility, which basically means that they like grid patterns, straight roads. Until the early 1990s, we continuously developed a planning regime of narrow roads with lots of curves and lots of obstructions to speed. The outcome was that you could drive on those roads but you could only drive at very low speeds. The roads that were like that were not the major thoroughfare roads; they were the roads which were purely residential. Kids used to run onto the roads and ride the bikes and they were more shared spaces.

**DR FOSKEY:** There are no footpaths in some of those places.

**Mr Winnel:** But they are not needed in these small cul-de-sacs and small roadways; they are simply not needed. The space has become shared and there is no danger. The



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evidence of studies about 30 years ago, I recall, was that where you had grid patterns in inner Canberra you had about 30 times the accident rate.

**THE CHAIR:** I have had constituents raise with me the matter of east O'Malley, where they say you are never going to be able to get a school bus through there and you will struggle with a truck. How does that reconcile with that obviously reasonable motivation about road safety?

**Mr Winnel:** Most roads do not require a school bus and do not require large trucks. Instead of having big cul-de-sac heads, which was a lot of bitumen and a lot of waste, we just linked our small roads with these little chicanes and you could only drive one vehicle across them at a time at very low speeds, but the residential environment for living there was great. If you had a furniture truck, you were slow and it was not as convenient, but most of the time you are not driving a furniture truck in these small streets.

**THE CHAIR:** Can the waste collectors get through all right?

**Mr Ineson:** Yes. The bus route was generally within 100 or 200 metres of these smaller minor roads.

**Mr Winnel:** The bus routes, of course, are on wider roads with straighter profiles and all the rest of it. The planning philosophy started to change in response to new urbanism and new urbanism was hooked on rear laneways. We started to run into a lot of conflict with the planners because they were pushing what I call an ideology. New urbanism itself has lots of good ideas. It is about making the streets more friendly, it is about more mixture, it is about more density and it is about more efficient resource usage and so on, but somehow it gets misinterpreted to mean straight streets, wider streets, bigger verges, and you end up with more water use, more bitumen, more high speeds of traffic and so on.

What we found when we got into this debate was that when we had a public partner there was a much easier path, because you would talk to your ACT government partner and inevitably they had Treasury affiliations and they were taking a broader view, I would say, than the straight planning ideology of the day. We always found that when you had a government partner, government resolved the issues internally fairly painlessly. I think that that is what is happening again. Because you have a public land agency, the debate is more even. There is not a set of developers to be beaten up and told what can be done. You have actually got public agencies.

**THE CHAIR:** So you like the private-public joint venture concept.

**Mr Winnel:** We had no problem with it. Our problems are always with the transparency of the process of selecting the tenderer. We have a really big problem with the transparency of the process, but that is not for today's hearing. We certainly have views about the lack of transparency in tender processes, whether there is a public partner as part of the outcome of the tender or not. We have very significant problems with transparency of the process but we do not have a problem with public-private partnerships. We have a problem when you do not establish some clear conditions, allow people to make their submissions and then publish the prices and the conditions of how they are awarded.

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There is great secrecy around the awarding of tenders these days. “Tender” is almost a misnomer. There is a set of negotiations where a favoured outcome is chosen and it may not be related to the dollars. That is okay as long as you lay on the table the prices everyone bids and what the structure of the outcome was, but that does not happen. We rewrote our submission today realising that that is really a different topic, although we would like to find a way of talking to the government about it.

We restricted ourselves today to the delays that occur within the system and to the fact that when government does put mandatory conditions in there it ought not to be a purely planning decision, because sometimes it does not reflect the community benefit. Sometimes it reflects a huge community cost borne by other facilities within government, a huge community cost which has not had a proper cost-benefit analysis done of it.

**THE CHAIR:** There are great opportunities for being costed, you are saying, by some of these decisions.

**Mr Winnel:** I think that you have to have economic perspectives as well as planning perspectives when the decisions you are making have a big financial effect, like a planner who says, “Okay, I accept that my impositions make this unviable. Here, have the site for nothing.” I think he is making a decision outside of his league and I think there is a need to get more cross-fertilisation of this economic perspective and the planning perspective so that when you are doing a plan and it has economic outcomes you do not necessarily drive the plan by your economic outcomes but you do understand them and you do make deliberate decisions, not hidden decisions.

**THE CHAIR:** I have to halt you there. I extended the meeting because we had a late start and it has been fascinating to hear what you have had to say. I appreciate your two written submissions. If you have supplementary information that you were not able to cover today, I imagine that the committee would look favourably on receiving anything else you wish to submit. I thank you for giving your time today.

**Mr Winnel:** I ask that you look at the items that we have not spoken to. They do not need a lot of explanation.

**THE CHAIR:** We will certainly consider those in the context of our final report. I thank the three of you for coming today.

**The committee adjourned at 3.40 pm.**