



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

**(Reference: Inquiry into Auditor-General's report No 2 of 2005:
development application and approval process)**

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 1 MARCH 2006

**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 4.11 pm.

TU PHAM

ROD NICHOLAS and

SIMONE STIMPSON were called.

THE ACTING CHAIR (Dr Foskey): I open this public hearing inquiry into the Auditor-General's report 2 of 2005—development application and approval process. Although you have heard it many times before, I am obliged to read this notice. 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. I must apologise for Mr Mulcahy, who could not be here. Would anyone like to make an opening statement?

Ms Pham: Tu Pham, Auditor-General. At the outset, may I say I am very pleased that the government and the authority have indicated their support for our general findings and recommendations. We have read other submissions to the committee. I am very pleased that the submissions from individuals and key bodies tend to support our general findings and recommendations.

I would like to take this opportunity to provide some brief comment on the authority's final submission to the committee and also to respond to some of the evidence given by the minister and the authority at the public hearing recently. The first issue is regarding the timeliness of the DA process and the ability of the authority to meet the statutory time frame. On page 6 of the transcript of evidence, in response to the chair regarding the timeliness of meeting the statutory time frame, the chief planning executive referred to a sample of 26 out of 5,000 and commented that they can't really do justice to determine what the percentage would be. That is in the evidence.

I refer the committee to table 2.2 on page 27 of the audit report. The report indicates a percentage of single residential DAs and non-single residential DAs not meeting the statutory time frame. It was 12 per cent and 30 per cent for 2003-04, going up to 18 per cent and 31 per cent in 2004-05. I want to clarify that those numbers are actually based on the whole data of 5,000 DAs, and not on the sample of 26. That information is comprehensive in terms of the percentage not meeting the statutory time frame, and that is based on the data of 5,000 or so collected by the authority. I just want to clarify that the information about the percentage not meeting the statutory time frame is not based on the sample of 26 but on the whole database of the authority, as indicated in table 2.2. The sample is usually for testing purposes only, so we collect a small sample for testing. But our findings and recommendations are based on an analysis of the whole database and on other information, documents and discussion with stakeholders. It is not based just on the testing sample that was used in our audit process. I want to make sure the committee has confidence in some of the information and findings that we provide in the report and which were not based on the small sample.

With certain issues relating to some of our recommendations, I am worried that there may be some misunderstanding of the issues or misunderstanding of the recommendations themselves. The minister commented that some of our recommendations are not practical—or impractical. I refer the committee to recommendation 5 of the report, which says that the authority should review the practice of a single officer assessing and approving a DA. The minister commented that it is not a good idea to have two or more officers assessing a simple residential development application because it means that it will take longer, and it is not a good use of the authority's resources and time. I want to clarify that it is not the intention of the recommendation to say that you need two or three people to assess a simple application. What we are saying is that we should have a process to review the assessment—by another officer. You could have one officer assess a simple application and the review process could be a very simple checklist to make sure that the officer has gone through the checklist and ticked all the requirements. It is a matter of checks and balances. It is a matter of ensuring that there is transparency in the decision process and that there is accountability of the officer involved. So we did not really recommend that two or three people should assess a simple application; we recommended a review process to make sure that the right checks and balances are in the system.

Similarly, in recommendation 9 we recommended that the authority should document the reasons for decisions for all DAs, in order to improve the transparency, fairness and reliability of the process. In the formal response from the authority to the committee it says that it is not practicable to provide a detailed statement of reasons for simple approvals. Again, the recommendation does not ask them to provide a detailed statement of reasons. In fact, in our report we make it very clear that, depending on the complexity of the application, the documentation of the decision may range from a simple checklist. It doesn't matter how simple an application is; the person who approves it has to go through a process to say that this application meets some criteria or requirements. The checklist has to be there so there is a document which says that the authority approved the application because it met all the requirements and criteria. It is a simple process. We do not ask the authority to provide a detailed statement of reasons for every single one.

So again there is a misunderstanding of our recommendation. The recommendation we made aimed to improve transparency and to give the community confidence in the process. The perception of the submissions from the community was that the decision-making processes are not always consistent, that they are not always done by qualified people, and that they are not always transparent so they can be justified. So that is a simple thing you can do to improve the process.

The last issue is about certain recommendations that the authority agreed to, subject to funding availability. One is about providing formal training to staff. To us this is a key issue because the evidence available to us indicates serious concern about the qualifications, expertise and knowledge of staff.

THE ACTING CHAIR: What recommendation number was that?

Ms Pham: Recommendation 18—a more formalised training program. I think the minister has already explained to the committee about the lack of planners and that he has to compete with the UK for experienced staff. So this is a very important recommendation. We would not like to see this delayed because of lack of funding. The

people who make those decisions need to be qualified to make the decisions under the law. If we have to wait for additional resources before we can take up that recommendation to train staff, not only in expertise and knowledge but also in other aspects like dealing with client services and being flexible or whatever the case, then I think we would have concern. So we would like to request that the authority give priority to the training of staff, as this is one of the key issues in the planning system which should not be subject to funding. That is all I have to say in commenting on the evidence provided to the committee so far. My colleagues and I would be happy to take questions in response to the report.

THE ACTING CHAIR: Thank you very much for those broader and deeper elucidations of what you meant and the shortcomings in the government responses to those recommendations. I have a number of questions that were passed on to me by the chair. In the first dot point on page 16, the Auditor-General's report noted that "not all referral agencies have statutory time frames in which to respond to referrals". What agencies do not have statutory time frames within which to respond?

Ms Stimpson: When the audit began, almost none of the referral agencies within DUS—and they later moved to CMD—had statutory time frames associated with their responses. However, there was legislation introduced in about March 2005 which gave the heritage unit some statutory time frames.

THE ACTING CHAIR: Have you any feeling for what might be reasonable time frames for each of those agencies?

Ms Pham: It is difficult to comment on the particular issue. Given that the authority itself has a statutory time frame of 30 days for residential applications and 45 days for applications with objections, within that time frame, it looked as if other agencies—if they get the referral at the beginning of the process, as soon as the application is lodged—then had one week shorter than the authority to provide comment back so that it would help the authority to meet their statutory time frame.

My further comment would be that, because of the high percentage not meeting the statutory requirement, even if it were 18 per cent or 20 per cent, it is still a big number because the statutory requirements are there for you to meet. If the requirement is too impractical or not realistic enough, then the government has a process to change the legislation to allow for more complex cases or to give the authority more time. If the legislation is there to be met, then 10 to 18 per cent not meeting the statutory time frame is a big issue. Therefore, other agencies then have to fit into the referral time frame required by the authority under the legislation.

THE ACTING CHAIR: I believe the planning reform project that the government is undertaking may get around this problem by reducing the role of other agencies. I am not sure whether you have had the chance or even the time to look at that. If that is the case, is that a good way of solving this problem?

Ms Pham: In complex applications, certainly there are issues which require expert advice which is outside the authority. The issue that we believe is missing is the integration of these replies into the process so that we have an integrated system by which they can come to the authority without a long time delay. We do not have

evidence which questions the role played by various expertise groups that currently the authority refers applications to. It appears that they have a role to play.

There is some evidence also that the authority relies on the expert advice of, say, the Land Development Council on various issues. On that basis, I can only make the observation that they all have a role to play in providing additional information and advice to the authority. The matter is how to get these replies in a timely manner and in an integrated way.

THE ACTING CHAIR: The second of Mr Mulcahy's questions relates to the pre-application process not working satisfactorily. He cites pages 20 and 21 as his justification for that statement.

The Master Builders Association and the Housing Industry Association say that the two major problems with the pre-application process are, firstly, applicants get conflicting advice because the person they deal with at pre-application has a different view of what is acceptable than the person who handles the formal DA; and, secondly, even though pre-application is voluntary, their members believe that they will be discriminated against if they put in a DA without going through the pre-application process. Did the Auditor-General hear those problems expressed in the course of preparing your report?

Ms Pham: We certainly had evidence that there is inconsistent advice from various officials within the planning authority. That is why we emphasised the importance of formal training for staff.

In regard to the second question, we do not recall having any evidence or information provided to us that they will be discriminated against. It is a small matter.

Ms Stimpson: Certainly we had some concerns raised about the process, but a perception of discrimination was not something that was the predominant feature of comments about the pre-application process. Mostly the comments that the stakeholders provided to us related to the time and effort that went into that process.

THE ACTING CHAIR: That is something that came out of the hearings that we had. The Auditor-General recommended in recommendation 2 that ACTPLA should monitor and record the time and effort taken to move through the pre-application process, where practicable, with a view to identifying where problems are occurring, the reasons for delays and how improvements will be made. Do you know whether this recommendation is being implemented? Are those recording and monitoring steps being taken?

Ms Pham: I believe the response is that they agree in part. They have tried to look at some way of improving the process. Because it is not a mandatory process, it is very hard to collect data. Also, in the response to the committee, I understand that the authority is looking at their lodgment and validation process. They have tried to create a form for initial contact with the authority. It looks as if they have started the process to respond to that second recommendation, according to the response provided to the committee.

THE ACTING CHAIR: Where do you think the problems are concentrated? What reasons would you suspect were the cause of the delay?

Ms Stimpson: Is it specifically in the pre-application process that you are talking about?

THE ACTING CHAIR: Yes.

Ms Stimpson: From the evidence that we gathered during consultation with the stakeholders, certainly a big part of the cause of the delay and the problems associated with that process is the complexity of both the legislation that drives the process and the guidance material that is produced by the authority for applicants' information.

THE ACTING CHAIR: Have you any suggestions as to how that could be improved?

Ms Stimpson: Certainly a rationalisation of some of that guidance material was suggested and is reflected in our recommendations.

THE ACTING CHAIR: I think the new legislation will reduce the complexity, but I am not sure that it is not going to lead to better planning outcomes. The Auditor-General found that many DA decisions did not meet statutory time frames. You made that point at page 16, the sixth dot point, and at pages 26 and 27. Since the statutory time frame for single residential DAs is 30 working days and 18 per cent exceeded that period and, in the case of non-residential DAs, 31 per cent were not processed in time, have reviews of the processes, such as the abolition of high-quality and sustainable design in June 2004, improved the performance factor in meeting its statutory time frames?

Ms Pham: In response to our concern that the percentage of applications approval did not meet the statutory time frame over the last two years, the authority explained that they went through a period of significant change, with changes in legislation and in their system. That partly explained why the statistics seemed to be worse over the last two years. We were even more concerned in recent months when our audit looked at the March 2004 to March 2005 data.

If that explanation is correct—and I have no reason to doubt that some significant change within the authority certainly created delays in the process—then certainly the number will improve in the next few years, particularly when the documentation system that they introduced in the last year or so is in place. Other initiatives that the government is looking at may improve that time line. We hope that they address the issues of not meeting the statutory time line.

Ms Stimpson: If I could add something on that point, the high-quality sustainable design process, when it was in place, was the equivalent of what is now the pre-application process. That process took place before the statutory clock started, if you like. Because of the timing of the audit and the fact that the audit occurred after the high-quality sustainable design process had been abolished, we did not look at a comparison of time frames, both pre and post the abolition of that process. We cannot comment on whether or not it has improved time frames.

THE ACTING CHAIR: I am reading Richard's questions here. What is the current performance level? Again, that is difficult for you. Do you continue to monitor agencies that you have produced an audit report on?

Ms Pham: The authority did not publish some of the information regarding timeliness as one of the performance indicators.

ACTING CHAIR: Do you mean in the latest annual report, or where?

Ms Pham: Not anywhere, publicly.

Ms Stimpson: In, I think, the 2003-04 annual report we did make a comment that there were performance time frames published but they were in an appendix entitled “financial analysis” or something similar. One of our recommendations was that they publish their timeliness statistics in a more prominent location in the annual report and perhaps also on their web site. As for their most recent annual report, I cannot comment on whether they have taken that up.

THE ACTING CHAIR: What are the main impediments at present to the statutory time frames for processing applications being achieved?

Ms Pham: I think perhaps that reflects on the findings in our audit report, which range from complexity of legislation, the lack of proper process or efficient process, the lack of guidelines for staff, the lack of staff expertise and knowledge, and maybe also the deficiency in the consultation and referral process. That timeliness issue very much reflects on the major issues or deficiencies in the planning system. It is hard to pinpoint one or two impediments. The first one would be the complexity of our legislation and the whole range of guidance, codes and instructions that are very hard for staff to follow and to process the more complex applications.

THE ACTING CHAIR: This is Richard’s fourth question: the Auditor-General found that performance against statutory time frames in some cases may be inappropriately enhanced by procedures such as asking the applicant, close to the statutory due date, to apply for an extension of time. That was on page 16, the seventh dot point. How frequently has this occurred?

Ms Pham: The numbers are not big. However, there are better systems of extending the statutory time line. We give an example of the New South Wales system, where the clock should recommence.

Ms Stimpson: We did suggest looking at something similar to that in New South Wales. We gave that as an example, but it wasn’t the only example that could be looked at. In the authority’s response to the committee when they gave evidence, Mr Savery did also mention that the ACT is one of the few jurisdictions, or perhaps the only jurisdiction, that doesn’t have a stop-the-clock provision in the legislation.

THE ACTING CHAIR: Do you think that any applications weren’t recorded as overdue because the applicant complied with the request to apply for an extension of time, and what proportion might that be?

Ms Stimpson: Yes, there would have been some applications, purely because the request for additional information, or the request for the applicant to apply for an extension, in the cases that we examined occurred very close to the statutory due date, so I think by necessity there would have been some overlapping of that statutory due date. What was

the second part of the question?

THE ACTING CHAIR: What proportion might that be?

Ms Stimpson: Unfortunately, that is not something that we reported on.

THE ACTING CHAIR: You probably cannot give a clear answer to this one either: has any coercion been used to “encourage” applicants to apply for an extension of time?

Ms Stimpson: It wasn’t something that was raised at stakeholder consultation, no.

Ms Pham: Some stakeholders do say that, if you don’t apply for the extension, your application will be deemed refused. So I think most people feel there is a need to have that extension to the application for it to be continued to be looked at and still alive rather than have it technically declared refused. So maybe that is something good and gets people to apply for that extension—although I note that the minister said that it is only a technical refusal so they will continue to consider it while they are waiting for additional information. But whether or not that information is communicated to the applicant, so that they know they have a choice whether or not to request an extension, we don’t know; we don’t have enough evidence to comment sensibly on that.

THE ACTING CHAIR: That sounded pretty sensible. Would you know then if this practice is still used by ACTPLA to put a favourable gloss on its performance data?

Ms Stimpson: Unfortunately, I am not aware of whether things have changed since the audit report.

THE ACTING CHAIR: I am sure Richard would deliver these questions with much more panache. Nonetheless, his fifth question refers to benchmarks. What are the main benchmarks for evaluating ACTPLA’s performance?

Ms Pham: At the moment we do not have a lot of information provided by the authority in terms of benchmarking. The planning systems vary so much from city to city and also from government to government. We don’t have a local government body looking after certain planning issues as in other jurisdictions. We have a different leasehold system. Our legislation is very different. So it could be a bit harder to benchmark our activity and compare it with similar activity in other jurisdictions. Having said that, it is always good to have some target to achieve in terms of timeliness in delivery of services, but we were not able to find any comparative statistics collected for the particular planning activity compared to, say, health or education, which are generally compared and benchmarked against other jurisdictions by the productivity commission or other national bodies. This certainly is a more diverse activity across local governments and councils, so it is harder to benchmark across the nation in similar local governments.

Ms Stimpson: I would add that during audit research stage we did try to get some sort of benchmarking statistics from industries and peak bodies. In New South Wales, for example, the local government and shires association, at the time that we spoke to the association, said that sort of data didn’t exist in New South Wales.

THE ACTING CHAIR: I am looking to see if you made a recommendation about

benchmarking. Did you?

Ms Stimpson: No.

THE ACTING CHAIR: So we can't expect them to say they're going to do it. I don't know whether this was part of your investigation, but do you know where ACTPLA might stand compared to perhaps municipal councils where they are responsible for planning. Did you have a look at other jurisdictions at all?

Ms Stimpson: That was very much the same type of thing, the information we were chasing when we contacted people like the local government and shires association. From speaking to individual councils during that research phase of the audit, we found that it varied wildly, certainly in New South Wales, from local government to local government. So we don't have much of a feel for how—

THE ACTING CHAIR: In New South Wales the planning reform has led to the state government being able to override and take on much of the decision making that would have been local government's previously, so I don't think we should really set ourselves that particular procedural policy direction. Is there any sense of the differences between costs per approved applications between our jurisdiction and other jurisdictions?

Ms Stimpson: No. Again that is, unfortunately, not something that we looked at in the audit. We didn't do a cost comparison.

THE ACTING CHAIR: Or the ratio of number of employees to approvals process each year?

Ms Stimpson: No.

THE ACTING CHAIR: That is the end of Mr Mulcahy's questions, and I've asked my questions as adjuncts as we've gone along. So that concludes our questions to you on this report on planning approvals and processes. Thank you very much for the work that you did; it is much appreciated.

The committee adjourned at 4.52 pm.