



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, 6 SEPTEMBER 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 that have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

WITNESSES

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The committee met at 3.03 pm.

BLAIR, DR SANDY, Heritage Specialist/Legislation Officer, ACT Heritage Unit, Department of Territory and Municipal Services

NEIL, MR BOB, Director, Environment ACT, Department of Territory and Municipal Services

PEARSON, DR MICHAEL, Chair, ACT Heritage Council

THE CHAIR: This hearing is part of an ongoing inquiry into the Auditor-General's report No 2 of 2005, relating to the development application and approval process. Appearing today are representatives of the ACT Heritage Unit and the ACT Heritage Council. I advise witnesses that the committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

To assist the Hansard reporting of proceedings, it would be appreciated if, when you first speak, you state your name and the capacity in which you appear today. Obviously, you would have seen the Auditor-General's report. I assume that you have had a chance to review some of the proceedings that have been part of the inquiry to date. I invite one of the representatives to open up with some words and then there may be some questions from the committee.

Dr Blair: Sandy Blair, manager of the ACT Heritage Unit and secretary to the ACT Heritage Council. Yes, we have seen the Auditor-General's report on the development approval process and we have had a look at some of the submissions before your inquiry. Just to reaffirm our role in the development assessment and approval process, under legislation—the Heritage Act 2004 is the current legislation but previously it was the Land (Planning and Environment) Act—the heritage council has a role in providing advice to the planning agency on development approvals that relate to places on the ACT heritage register or nominated to that register.

Previously, before the act came into force, there was an agreement between the planning

agency and the heritage unit that that advice would be provided within a 10-day turnaround, insofar as that was possible. The legislation actually sets up a statutory turnaround period of 15 working days and our outputs measure our performance against those statutory time frames.

The heritage council does not actually make any decisions; it has not got a decision-making role in relation to development applications and approvals. Of course, ACTPLA has that. The heritage council's and unit's role is very much integrated with the planning system. They refer applications to the heritage council for advice. The heritage council, or the unit on behalf of the council under delegation, prepares that advice, takes part in any meetings that are required, works with a task force of the council and then provides that advice to ACTPLA for them to make their final decision on the DAs. I think there are some misunderstandings in some of the submissions. There have been various assertions about how that process takes place. I just thought it was worth going through that detail up front just to clarify the process.

THE CHAIR: Just on that point, before you comment further, are you saying that the heritage unit and council do not take a proactive role, that their interaction is all with ACTPLA?

Dr Blair: Yes, that's right. The heritage council has no separate decision-making power about development applications.

THE CHAIR: I don't think that was my question. My question was whether you take a proactive role beyond dealing with ACTPLA on applications. In other words, do you go out into the community to put a view or take opinions independently of ACTPLA?

Dr Blair: No, we very much work with ACTPLA and their processes. If there are objections to development applications or if there is a need for meetings about development applications, all that is run through ACTPLA. The heritage council has updated its processes in the last two years. In, I think, 2004 council developed some policies in relation to how they dealt with development applications, particularly around attending site meetings with applicants and ensuring that those processes were all run through ACTPLA, because I think council—perhaps the chair would like to speak to this because he has been involved in some of those issues—found from going to on-site meetings with applicants that there was an expectation sometimes that council would give on-the-spot advice, and that it was inappropriate and beyond council's power to do it. So council has developed quite clear procedures now about attending on-site meetings and the role of council members at those meetings.

THE CHAIR: Do you want to add any further comments initially before we go to questions, or does that cover all of it?

Mr Neil: I think that covers it fairly well.

THE CHAIR: Okay. I will lead off with a few questions. In the 2006-07 ACT budget it was noted that the transfer of the environment and heritage administration from Chief Minister's to territory and municipal services had occurred. What is your view on the impact of the management of environment and heritage issues in the ACT in terms of administration and cost? Do you have a view in terms of what these administrative

changes will mean? Will it cost more? Will there be savings?

Mr Neil: Bob Neil, director of environment protection and heritage. Until the full restructuring or adjustment to the budget is completed, I think that answer can't be finalised. As far as I can see, there are the resources to adequately continue what we have been doing in the past and I don't see any change to that, but there is a process going on within territory and municipal services to integrate quite a few functions.

THE CHAIR: We are now coming towards the end of the first quarter of this fiscal year and you don't have clarity as to what is going to happen. When do you expect you will know the position concerning the impacts that I am asking about?

Mr Neil: My expectation is by the end of this month. There are meetings occurring and discussions with all the stakeholders. So I think by about 19 September we will have some idea and not that far past that we will have a very clear idea.

THE CHAIR: You said the resources will still be there. Is that to say that the capacity of the ACT Heritage Unit and council won't be affected in any way by the changes? Do you believe the capacity will still be there?

Mr Neil: I believe the capacity will still be there, on the information I have, and I've got no reason to believe that that will change significantly. So I am fairly confident that will be the case.

THE CHAIR: I have a few other questions here that I would put to you in the context of ensuring adequate consultation by government agencies with applicants throughout the DA process. In a submission to this inquiry a witness expressed the view that the heritage unit had not consulted with him directly on issues related to his development application and had based its actions on inaccurate information about the said property, ultimately resulting in an investigation by the EPA that impacted adversely on his DA. Could you give us a view about that particular perspective?

Mr Neil: I am not 100 per cent sure as to which particular incident you may be referring to.

THE CHAIR: The submission from the Powers.

Mr Neil: There was some advice provided to the planning authority in relation to Mr Power's application. We had a view that he was acting without appropriate development approval and was breaching the Heritage Act, based on some of the work he was doing at the house. On that basis, we just followed normal due process. We investigated the matter and provided a brief to the DPP. It wasn't until that brief was reviewed by the DPP that there were concerns raised about whether he did have approval or not. The DPP's view was that he may have had approval and they wouldn't proceed with the case, in which case we just dropped the whole thing.

THE CHAIR: That is jumping a bit ahead of where I am. I want to deal with the first part of it. You are probably answering some of this, but the issue I had was about consulting, because just a moment ago you spoke about your willingness to consult without being proactive. Does anything that has come to light in that particular example

give you cause to reflect on a criticism about the appropriateness of consultation in your processes? Has that led to changes in approach?

Mr Neil: Yes.

THE CHAIR: It has. What sorts of changes?

Dr Pearson: If I can respond to that too.

Mr Neil: I will let Dr Pearson respond, but part of the advice from the DPP indicated that there could have been some conflicting advice provided, informally or otherwise. There was also a report done by the ombudsman that came up with a similar response. Based on basically the ombudsman's initial report and the uncertainty, there were measures put in place to ensure that no informal advice is provided, so that there can be no misunderstanding, so that it is quite clear the only advice can come in written form through the planning authority, which, in fact, is the appropriate regulatory authority in that case.

THE CHAIR: When were those changes to your processes brought in? Do you have them in a documented form that you can make available to the committee?

Dr Blair: Yes, we do.

Dr Pearson: If I can comment on that, too. My name is Michael Pearson. I am chairman of the ACT Heritage Council and I was involved in that exercise all the way through. I think you have to bear in mind, too, that that particular case commenced prior to the Heritage Act coming into force.

THE CHAIR: Yes, I am aware of that.

Dr Pearson: So it was under different circumstances.

THE CHAIR: I am interested in knowing what you have done to fix things.

Dr Pearson: In one sense, part of what turned out to be the final problem arose, in fact, because the heritage council was trying to be too helpful.

THE CHAIR: Right. I am sorry, but I want to try to encourage you, if you would, just to listen carefully to my questions and deal with those issues. What I have asked you about is whether you have changed your processes, which I understand you have.

Mr Neil: Yes.

THE CHAIR: When did that happen? Do you have documentation you can present to this committee? I don't want to go through the whole history of this case.

Dr Pearson: No, but my response is directly related to that. The heritage council had a subcommittee which met on site on a particular case. That subcommittee discussed the evidence that was thrown around willy-nilly at the site, discussed it openly because we thought we were in discussions about a solution. The applicant took that as being in fact

advice, which it never was, and all the way through the heritage council kept saying, “You have to come to a DA.”

THE CHAIR: Could you come to the question I have raised, Dr Pearson.

Dr Pearson: After that process, the heritage council said that that did not work because the person took it as advice. We therefore immediately changed the procedures to say that the task forces would attend such meetings with clients, where clients requested such meetings, would hear out the applicant’s case, but would not make any comment in relation to the application other than asking questions for clarification, would make any comment amongst itself as heritage council in camera, and that would be the formal advice which went back either to the applicant or to ACTPLA. If it is a case of a DA, it would be ACTPLA. That was formalised as an ACT Heritage Council process in, from memory, about February or March 2004, it would be.

THE CHAIR: In 2004?

Dr Blair: 2005.

Dr Pearson: Yes, that’s right, 2004, prior to the act. It was two months after the meeting.

Dr Blair: And the meeting was—

Dr Pearson: It was in December 2003.

Dr Blair: That’s right, yes.

THE CHAIR: I am totally confused now, Dr Pearson, because your colleague just indicated that following the experience with the DPP you changed the process because of the issues they had raised, as I understood. You are saying, in fact, that two years earlier you had changed the process.

Dr Pearson: We had changed the process earlier. The process with the DPP was that we were still fully convinced that the actions of the applicant were, in fact, in breach of the requirements of legislation.

THE CHAIR: So, despite the concerns that Mr Neil has outlined of the DPP and the ombudsman about whether you had given advice or not, nothing in fact since that time has changed in terms of your procedure and there is no new written documentation.

Dr Pearson: No, the procedure changed immediately after that initial meeting.

THE CHAIR: Back in 2004.

Dr Pearson: That’s right. By that time, the process was in train. There were several attempts through the AAT to resolve that issue and resolution was simply not possible.

THE CHAIR: Do you have that new policy in a documented form that we can see?

Dr Pearson: Yes.

THE CHAIR: Could you provide that?

Dr Blair: I can provide that to you.

Mr Neil: We will provide it.

Dr Blair: In fact, it is now being put together with a range of policies relating to council and its procedures and it is being formalised in a code of meeting conduct which goes together with some regulations about the council processes that are currently going through the system.

Mr Neil: But we can get that.

THE CHAIR: Is there a current policy that is in a documented form?

Mr Neil: Yes.

THE CHAIR: But you are modifying it further now; is that what you are indicating?

Dr Blair: No, basically that policy has been in place since the council meeting of February or March 2004 and it was a direct response to the confusion of the site meeting in relation to the Mr Power case. So the procedure was written as a council paper, it was adopted by council, and it is now being compiled in a set of council policies and procedures that is quite formal.

THE CHAIR: When do you expect that new documentation to be settled? You said there were regulations and such things.

Dr Blair: Yes. The regulation is currently going through the process and it is accompanied by a code of meeting practice that the heritage council has signed off as a formal document that will guide their processes. The regulation actually covers a number of other things, like declaration of conflict of interest by council members in relation to things they are considering.

THE CHAIR: Have there been issues there or is that just a precaution?

Dr Blair: No, it is picking up some things.

Mr Neil: Good governance. In relation to your specific question about the policy, we will just go back to the minutes of the meeting, because that is where it will be, and forward it up.

THE CHAIR: Thank you. Obviously we are looking at making recommendations on this process and, hopefully, making our contribution to improving it, notwithstanding changes the government has announced. If we could focus on this issue of the standard of consultation that is now provided to applicants, do you feel that you are now at a standard where you are very comfortable with the checks and balances that are in place, the processes? Do you believe you have reached that point now?

Dr Pearson: I think so. It is always a delicate decision-making process, because we most often have meetings with applicants at the applicants' request, either on site or off site, but in many cases those meetings are held before there is the formal lodging of a DA, so you are always not quite clear exactly what is going to be in the DA. But that process is one more of heritage council gaining information itself, because we are not in a position to actually provide direct feedback on individual cases, because we do that through the DA process, through ACTPLA. We outline at the front of any meeting that we are here to listen, hear and seek clarification on the proposal but we are not here to provide advice on that proposal.

Dr Blair: If I could just add a comment. The other part of the policy that tightened up the administrative procedures is that we will not attend meetings unless ACTPLA organises them, is present and takes file notes.

THE CHAIR: Is that a new procedure too?

Dr Blair: No, we adopted that procedure at about that same time, it was part of that policy, but it has become stronger as ACTPLA in fact have reformed their own processes. For instance, now they do take a file note of every meeting. There is a formal record. Those things have been introduced more recently. I am sure ACTPLA could say when, but I don't remember precisely.

THE CHAIR: In the context of ensuring transparency and consistency in guidelines that agencies follow when dealing with development applications, do you now have any published guidelines that are available to the public on the processes that are used by the heritage unit or the heritage council with development applications? Is there a generally available set of information on your web site or something to that effect?

Dr Pearson: There is a set of information leaflets on process but the core information, which is the guidelines which are required by legislation, is still going through the process.

THE CHAIR: Is that all part of this package that Dr Blair mentioned?

Dr Pearson: Yes.

Mr Neil: But there were guidelines before.

Dr Blair: Sorry, just to clarify, the transitional provisions of the Heritage Act brought across the old development controls, the specific requirements, and brought them into the new system. So existing entries on the heritage register at the time the act commenced and what are now guidelines but were called under the old system specific requirements continue to apply. For instance, for the nine garden city heritage precincts there are in place heritage guidelines which have been carried over from what was in place before the Heritage Act.

What the council is now preparing and has ready in draft and is currently discussing with ACTPLA to make sure we get the best integration with their new planning reform system and with their codes and referral agency guidelines and so on is a package of heritage guidelines that will apply to any new heritage listings, and they have had new

listings on hold until they get this package in place so that there is no uncertainty in the community.

Dr Pearson: And that package is also required by the Heritage Act.

THE CHAIR: Are your processes publicly available? Are they presented so that people understand, so you avoid these sorts of dramas in the future, hopefully? Is that clear for a potential applicant?

Dr Blair: I believe it is, and if you go onto the government web site and look under heritage you will see all the information sheets that are available, including on the development application process.

THE CHAIR: And the processes that you use.

Dr Blair: Yes.

THE CHAIR: Okay. I've got a bit more, but Dr Foskey probably has some questions in this area, too.

DR FOSKEY: Could you let me know how many staff work in the ACT Heritage Unit?

Mr Neil: Currently, 12; 11.6.

DR FOSKEY: I am interested in the way that departmental officers work with the heritage council. The heritage council assumedly has some voluntary people. I am interested in how people are selected for the council, how it is currently constituted and how you work with departmental officers.

Dr Blair: If I can comment first, you are probably aware the members of council are, in fact, ministerial appointments through the appointments process. In the past, various ministers have advertised seeking expressions of interest from people who want to go on the council. The Heritage Act sets up categories of relevant expertise that must be represented on the council and it also sets up categories of representation, with representation from the Ngunnawal Aboriginal community, the community broadly and the development industry. So it is a mixture of expertise and community representation. Council members are remunerated under the remuneration tribunal for attendance at meetings and formal duties, though I must say that many of them put in a contribution that goes far beyond that. I think the last bit was about how departmental officers work with the council.

DR FOSKEY: Yes, how you interact.

Dr Blair: The unit provides the secretariat to the council. The council is the decision maker basically on heritage registrations, but the heritage unit prepares a lot of the paperwork for them to make their decisions on. Council meets about six times a year.

Dr Pearson: For a lot of the day-to-day work where council input is required—for example, with DAs, with register processes, with the grants programs and with Aboriginal sites information—the council sets up task forces which are basically

subcommittees of council and those task forces meet much more regularly between meetings on those issues, the most active one being the DA task force, which meets fortnightly to look at DAs coming through the system.

DR FOSKEY: Sorry for interrupting your flow, but I am asking you because I need to know what I don't know. Do all the DAs come through you and do you decide which ones are relevant or not, or has there already been a selection?

Dr Pearson: The only DAs which come to the heritage unit are those for places which are registered or nominated for registration. There are guidelines for the unit for delegated responses on specific categories of DAs and then there is a series of categories of DAs where the task force will comment and give advice. Where there is a clear-cut case that something is simply not allowable under the Heritage Act, the heritage unit has the delegated power to give that advice back to ACTPLA. Where there is a matter of choice/decision/judgment about those issues, the heritage unit would bring in the task force to work through those issues. So it is a mixture of delegated administrative process and task force input.

DR FOSKEY: Is ACTPLA obliged to take your advice when it is very clear that it is in a heritage precinct and the proposal goes contrary to that? Is there an obligation upon ACTPLA to enforce that?

Dr Pearson: ACTPLA are not obliged to enforce it. They are obliged to take the heritage council's advice into account in making their decision.

DR FOSKEY: In a sense, they have a stronger power than the heritage unit and the council in terms of what actually happens.

Dr Blair: They are the final decision maker, yes.

DR FOSKEY: Have you been involved in the development of the new legislation?

Mr Neil: Yes, we have had some input at various times.

DR FOSKEY: That was very carefully put.

Dr Pearson: There is an ACTPLA representative on council and council has been advised regularly as to the progress of that exercise and the issues that are being brought up. So council has been kept informed on that process.

THE CHAIR: I think Dr Foskey's question was the reverse, though.

Dr Pearson: Right.

DR FOSKEY: I can go on and ask then whether you are satisfied that the legislation as it stands, as draft legislation, will provide a degree of protection that you think is appropriate to heritage buildings in the ACT.

Dr Blair: I think there are still some details that we are working through with ACTPLA. In general terms, I think it is okay. I think we need to work through some of the detail

with them, and we are in the process of doing that.

DR FOSKEY: Do you think that discussions or merit discussions belong in the code? Do you have any thoughts about those two strains?

Dr Pearson: There are certainly problems with some of the discussions which we are having with ACTPLA about just those issues. Council is certainly very nervous about the code line for heritage places where often the decision is about the impact of a proposal, something which is not easily codified, and there is more often than not a judgment in relation to the nature and the extent of the impact of a proposal which in other circumstances would simply be easily codified. So we are interested in teasing out exactly where that sits and how the process deals with heritage-listed places, given that sensitivity in terms of the sorts of works that cannot or should not be carried out.

DR FOSKEY: Of course, as in development approvals, your advice may be heard but not acted upon in that ACTPLA, and ultimately the government, has the final decision about the shape of that.

Dr Pearson: That was discussed at length at the time of the drafting of the Heritage Act and both views were put. One view was that the heritage council should have that power of veto over specific planning processes. The other view was no, it should be input to an integrated planning process. At the end of the day, that was the decision that was taken, that that was the most appropriate way to go.

DR FOSKEY: You are treated, I hope, as equals in terms of your expertise.

Mr Neil: It would certainly have been our experience that that is the case, yes.

DR FOSKEY: When there is, I suppose you could say, a clash between a sustainability building measure in a retrofitting of a house that is in a heritage area—let's think of Reid, because we all know that it is a heritage area—and a person wanted, for instance, to install a solar hot water system and that required something on the roof, are there any conflicts in that area? One bit of the environment department, I am sure, would be very happy to have such measures, but would that come into something that you would have something to say about?

Dr Blair: Yes. We have had lots—a number, anyway—of referrals of such proposals as part of DAs and we have developed a set of policies about how solar hot water can be installed in heritage cottages, minimising the impact on the streetscape or the fabric of the cottage. That is the sort of thing that probably could easily be codified, in fact, because it is quite clear cut.

DR FOSKEY: At the moment, would that require a DA? It would because it is in a heritage area.

Dr Blair: Yes, if things are on the register. The exemptions for minor development, for instance, under the current system don't apply if it is in a registered area.

THE CHAIR: So that any modifications require a DA.

Dr Blair: The things that are defined as minor development. So it would pick up things like landscaping and carports.

Dr Pearson: Carports are certainly one of the common issues that come before us.

Dr Blair: One of the things, I think, to work through in the planning reform is how that category of what is now minor development is going to be accommodated in the new system. The other thing, I think, is the exemptions under the Building Act, where certain activities are exempt from DAs and covered under the Building Act; for instance, the building of walls. That may be an issue in a heritage precinct. So it is how some of those things fit together that I think we still need to do a little bit of teasing out.

THE CHAIR: How does the landscaping work? If you have got a property where those areas are deteriorating because of the age of the resident, financial incapacity or whatever, how do you tackle those issues? Are you saying that people can't deal with that essentially, that it is protected?

Dr Pearson: No, but things like the balance between a growing landscape and hard landscape surfaces, for example, the location of garden structures, those are issues which can have some substantial impacts on the heritage values of a place. So the emphasis isn't on trying to control people's landscaping; it is trying to avoid elements of landscaping which can have a negative impact. Primarily, in a lot of the suburb areas, the garden city suburbs, for example, it is about what happens forward of the house line, so the amount of hardstand. We have had cases where gazebos have been designed which are quite clearly carports forward of the line of the building, which is not allowable in the process. If you tried to convert that sort of thing into a code system, that could work if the code system said things like those structures would be a certain distance behind the existing front line of the facade of the building, which is what our current guidelines say. A lot of those issues aren't problematic issues, but they are ones which are of concern to heritage because of impacts.

THE CHAIR: I am thinking particularly of gardens where—and we had this issue with one in Mugga Way—the subsequent owner may not be in a position to maintain that level of effort and cost.

Dr Blair: Box Hill, yes.

Dr Pearson: Some of those cases, in fact, come before council and, where council is in a position to make decisions on those things, it does so. There are some situations where the council is, in fact, bound by the specific requirements or, as they now are, guidelines for a specific place in terms of shall and shall not, in terms of the way in which the things are written. So in some instances we have no option but to pursue a particular line on a particular issue. It is then an option for ACTPLA to concede that or not.

THE CHAIR: It is a reverse situation, I gather; you are saying that these landscapes are all, effectively, protected without permission to change, rather than saying that it is a unique landscape.

Dr Pearson: No, they are not all, necessarily. It depends very much on what is stated as being important about that particular place. In some instances, the value of a place is

simply the architecture of the house. It may or may not include specific reference to landscape issues. In other instances, the landscape is part of the reason the place has been nominated and registered. In the case of the garden city suburbs, for example, the pattern of a building and landscape is important, not from the point of view just of an individual block but of the suburb, feel and character. So a lot of what we deal with in terms of the DAs which come forward in relation to those things is about the impact of those proposals on the overall character of a suburb, not just on the individual person's block.

DR FOSKEY: In terms of your ability to have input to the new legislation, do you feel that the time lines are appropriate and that the opportunities are appropriate? You would be aware that one of the things that were being said in relation to delays for development approvals was that there were hold-ups in Environment ACT and heritage. I think you answered that when you said that there is a statutory period of 15 days, which seems quite reasonable. As a personal view, I felt that ACTPLA in its evidence was basically pushing aside the input that those other agencies might have, almost saying, "If we don't get it in time, well, that's tough. Too bad." Therefore, I am concerned about how much you really are being given an input, given that once this new legislation is in place there is not going to be a lot of scope for individuals who have aesthetic considerations or historical considerations unless they have material considerations, and that is not usually the role of people who are concerned about heritage. That was a long speech but it gives you permission, I hope, to say what you really feel about the process.

Dr Blair: If I can just come in, I think ACTPLA picked up the 15-day referral agency process which they have now put into their draft legislation basically from the Heritage Act because our experience in working with ACTPLA was that that was quite workable in almost all cases. The 15-day time line is adequate, as long as we have complete information and council has the complete information before them, for council to consider it, get some advice back and still allow ACTPLA to run its own statutory time lines. So I think that it is helpful to have that aspect of it tightened up in the new package.

DR FOSKEY: Right, but will you have a role in all the proposals or only some because of these categories of code and merit?

Dr Blair: I think the intention is with the code assessment that it be signed off by ACTPLA without referral, so I think the discussions we are currently having with ACTPLA are quite critical about what is suitable to be codified and what is not, what can't be codified. So we are looking at that very carefully.

Dr Pearson: I think it is also worth indicating, and we have not tested it as yet, that there are certainly powers for heritage orders under the Heritage Act for protection of places from actions which are going to be damaging actions. I am speaking now solely as the chair of the Heritage Council, not as a member of the ACT administration, but my feeling would be that if the changes proceeded to allow for, say, codification processes which led to quite overt damage to heritage values and places I would be recommending strongly that we trigger the protective mechanisms of the Heritage Act to in fact act on those things, because they are matters which the heritage council would not have had either prior warning of or knowledge of, or input to.

DR FOSKEY: The role of your council may be considerably changed in that you won't

have those DAs set out before you to such an extent.

Dr Pearson: We will still have the DAs.

DR FOSKEY: Yes. On the merit, though.

Dr Pearson: It is how they are dealt with under the different code system, but that is still an issue in discussions between us.

Dr Blair: It is the exemptions and the code, I think, in particular that we are looking at very closely with ACTPLA.

THE CHAIR: I recently met with the Dublin Civic Trust and was briefed on a project they have successfully completed whereby they have recorded every building in the city of Dublin, including—to me, anyway, as a non-architect—some pretty ugly buildings from the 1960s and 1970s. They looked to identify architectural significance or design significance of buildings irrespective of whether they were 200 years old or contemporary. They photographed, logged and recorded them and put all this data together. Do we have anything akin to that? I know you have certain things recorded and registered, but do we have anything as comprehensive at the disposal of the heritage unit or council? Is there anything contemplated whereby you would have such a widespread recording?

Dr Blair: It sounds lovely. I wish I worked in Dublin.

THE CHAIR: It wasn't that expensive, which surprised me.

Dr Pearson: We have previously had discussions also with ACTPLA about the possibility of, in fact, jointly doing such surveys and we would love to do such surveys, but it does have resource implications. Certainly, council's assessment processes include modern architecture as well as the older buildings. In a place like Canberra, you can't avoid that broad approach. We are certainly keen to pursue that exercise. Some small parts of that have been undertaken by groups such as the institute of architects with their significant 20th century architecture studies in Canberra.

THE CHAIR: That would be, I assume, examples rather than being comprehensive.

Dr Blair: Award winners.

Dr Pearson: It is award winners and studies of places which relate to the pinnacle of architectural development or architectural design over the periods. So you get the highlights coming through that exercise. There have been occasional studies of the works of specific architects in Canberra or studies of specific suburbs. Some of the studies done for the garden city-type suburbs, for example, took areas and did reasonably intensive surveys within specific areas. But at the moment we don't have the resources and have not had the resources to do that across the ACT generally.

THE CHAIR: For your information, they are happy to work with you if you are interested in liasing and I will give you the contacts. They certainly said that they would be happy to work with the ACT and lend it the benefit of their experience. They did it on

a very cost-effective basis. If it is of interest to you, I could give you that.

Dr Blair: It would be helpful to have the contact point and we could see what they have done.

THE CHAIR: Yes. Turning to the last two questions on the evidence that we got in relation to this Reid matter, the letter of 12 December signed by Mr West indicated a prospect of criminal prosecution. The first part of my question is: did any of you sign off on this, or was it approved by a higher authority? The second question I have is: given that the DPP dropped this matter and given the long, drawn out saga that we don't need to go through here, do you, particularly yourself, Mr Neil, feel that this has been handled as well as it might have been or, with the benefit of hindsight, do you think a more conciliatory approach might have been far more preferable than where this went?

Mr Neil: Hindsight is a wonderful thing.

THE CHAIR: Yes.

Mr Neil: The letter from Mr West was certainly known to me and went out with my approval. I think from memory that was just in response to some allegations of harassment and various other bits and pieces, and our view was pretty straight up and down. We were trying to get the facts related to what we believed was a breach of the Heritage Act, and it is a criminal matter. So the letter in that sense was just, "Look, that's why we were there," and we had every right to be there.

The matter has been long running. Obviously, it started slightly before my time there, and Mr West's for that matter. We have, since the commencement of the Heritage Act, tried to bolster some of their enforcement and investigative capability. Prior to that it was done through the planning authority. From what we could ascertain, there was no development approval to actually undertake the works that he had undertaken and, based on expert advice, that work had diminished the heritage value of his property, basically. It met all the criteria for a breach of the Heritage Act, so we just went through the processes of investigating it.

Unfortunately, it took a long time. The DPP had it for quite some time before they came back to us. Mr Power had gone to the AAT, to the ombudsman, to the privacy commissioner, basically every avenue he could. So we were constantly responding to their requests for information, and each time we got information back it just added another piece to the puzzle and it wasn't until the final report back from the DPP that we realised that there was a problem with the prosecution and dropped it and apologised to Mr Power.

THE CHAIR: You have apologised now.

Mr Neil: Yes, written, both the heritage—

THE CHAIR: I take it that that means that you probably agree that it probably wasn't handled as well as it might have been.

Mr Neil: Mr Mulcahy, hindsight is a wonderful thing.

DR FOSKEY: It sounds like Mr Powers did the community a service, in a sense.

THE CHAIR: It seems that way to me too, Dr Foskey.

DR FOSKEY: Dr Pearson wishes to speak, I think.

Dr Pearson: I just take the view that it takes two to tango in this particular case and I would refer back to the ombudsman's conclusions. Do you want me to read out the ombudsman's conclusions?

THE CHAIR: I think we've got that in this evidence. But you are disagreeing with Mr Neil, are you; you don't accept it hasn't been handled well?

Dr Pearson: It hasn't been handled well on both side was my view.

THE CHAIR: I don't think we are saying that there was not a contributing factor.

DR FOSKEY: No.

THE CHAIR: We expect governments, obviously, to apply common sense.

Dr Pearson: But one of the messages, though, from the exercise was certainly a message to us and we have dealt with that by substantially typing up internal processes so that this would not happen again. In fact, under the new Heritage Act it is less likely to happen anyway. But I think it also has a substantial message on the other side to say due process in planning process is important; you cannot proceed without a development approval to do works, and continue to do so regardless of anything else.

DR FOSKEY: Absolutely.

THE CHAIR: I think we recognise that, but I think it is also very important that people in government agencies understand the rights of individual citizens and how to handle them, and that is my message.

DR FOSKEY: We do have individuals in the ACT who share some of those characteristics.

Mr Neil: But certainly in Mr Power's case the investigation was just due process. There was nothing unusual about it, other than the fact he wouldn't talk to us.

THE CHAIR: Thank you for your attendance.

Mr Neil: And we will send the policy.

THE CHAIR: If you send that to the committee secretary it will be most appreciated.

The committee adjourned at 3.55 pm.