INQUIRY INTO ENGAGEMENT WITH DEVELOPMENT APPLICATION PROCESSES IN THE ACT

STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL

APRIL 2020

REPORT 12

THE COMMITTEE

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RESOLUTION OF APPOINTMENT

On 13 December 2016 the Legislative Assembly for the ACT, when it created Standing Committees for the Ninth Assembly, resolved at Part 1(f) of the Resolution that there would be a:

> Standing Committee on Planning and Urban Renewal to examine matters relating to planning, land management, the planning process, amendments to the Territory Plan, consultation requirements, design and sustainability outcomes including energy performance and policy matters to support a range of housing options.[1]

On the same day, the Legislative Assembly also resolved at Part 3 of the Resolution that:

> If the Assembly is not sitting when the Standing Committee on Planning and Urban Renewal has completed consideration of a report on draft plan variations referred pursuant to section 73 of the *Planning and Development Act* 2007 or draft plans of management referred pursuant to section 326 of the *Planning and Development Act* 2007 the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.[2]

TERMS OF REFERENCE

On 22 March 2018 the Assembly was informed that the Standing Committee on Planning and Urban Renewal had resolved to inquire into and report on engagement with Development Application processes in the ACT, with reference to:

1) Community engagement and participation in the Development Application process including:
   a) the accessibility and clarity of information on Development Applications and Development Application processes, including Development Application signage; the Development Application finder app; and online resources;
   b) pre- Development Application consultation and statutory notification processes; and
   c) the availability and accessibility of current and historical Development Applications and decisions in relation to Development Applications, including reasons for Development Application approvals, conditions or rejections.
2) The accessibility and effectiveness of Development Application processes, including:
   a) the information provided in relation to the requirements for Development Applications;
   b) the current development assessment track system;

[1] Legislative Assembly for the ACT, *Debates*, 13 December 2016, *Transcript of Evidence,* 10 March 2017, p. 40.
[2] Legislative Assembly for the ACT, *Debates*, 13 December 2016, *Transcript of Evidence,* 10 March 2017, p. 41.

c) the Development Application e-lodgement and tracking system, e-Development;

d) processing times for Development Applications;

e) retrospective Development Applications;

f) reconsideration and appeal processes; and

g) Heritage, Tree Protection and Environmental assessments.

3) Development Application compliance assessment and enforcement measures.

4) Development Application practices and principles used in other Australian jurisdictions.

5) Any other relevant matter.

ACRONYMS

AA	Asset Acceptance
ACAT	ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
ACTPLA	ACT Planning and Land Authority
AHURI	Australian Housing and Urban Research Institute
AIA	Australian Institute of Architects
BA	Building Approval
CBC	Canberra Business Chamber
CCA	Campbell Community Association
CIV	Capital Investment Value
DA	Development Application
DAF	Development Assessment Framework and/or Forum
DAPs	Development Assessment Panels
DC	Development Coordination
DDA	*Disability Discrimination Act* 1992
DV	Draft Variation
ED Act	*Environmental Development Act 2012*
eDev	eDevelopment (ACT Planning)
EDO	Environmental Defenders' Office
EDT	Economic Development and Tourism Committee
EES	Environmental Effects Statement
EIS	Environmental Impact Statement

EPA	Environment Protection Authority
EP Act	*Environment Protection Act* 1994
EPIs	Environment Planning Instruments
EPSDD	Environment, Planning and Sustainable Development Directorate
EPBC Act	*Environment Protection and Biodiversity Conservation Act* 1999
ESO	Environmental Significance Opinion
FOI	Freedom of Information
FoHV	Friends of Hawker Village
GCC	Gungahlin Community Council
GFA	Gross Floor Area
HIA	Housing Institute Australia
HIS	Heritage Impact Statement
ICOMOS	International Council of Monuments and Sites
IHAPs	Independent Hearing and Assessment Panels
ISCCC	Inner South Canberra Community Council
KBRG	Kingston and Barton Residents Group
LDAP	Local Development Assessment Panel
LEPs	Local Environment Plans
LLP	Local Planning Panel
LMPP	Landscape Management and Protection Plan
LPS	Local Provisions Schedule
MBA	Master Builders Association
MPRG	Major Projects Review Group

MRA	Metropolitan Redevelopment Authority
MUHDC	Multi Unit Housing Development Code
NCA	National Capital Authority
NCDRP	National Capital Design Review Panel
NCP	National Capital Plan
NI	Notifiable Instrument
NOD	Notice of Decision
NPR	No Permit Required
PD Act	*Planning and Development Act* 2005
PDAs	Priority Development Areas
PDI Act	*Planning, Development and Infrastructure Act* 2016
PIA	Planning Institute of Australia
PPOS	Principal Private Open Space
PRA	Preliminary risk assessment
RZ2	Residential Zone 2
SARA	State Referral Assessment Agency
SAT	State Administration Tribunal
SCAP	State Planning Assessment Panel
SEPPs	State Environment Planning Priorities
SDPWO	*State Development and Public Works Organisation Act* 1971
SPP	State Planning Policy and/or Provisions
TCCS	Transport Canberra and City Services
VCAT	Victorian Civil and Administrative Tribunal

WAPC	Western Australia Development Commission
WOVA	WOden reVAmped (GEOCON Development)

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RECOMMENDATIONS

RECOMMENDATION 1

4.32 The Committee recommends that within the next 12 months the Directorate review the pre-application advice process and operation of the National Capital Design Review Panel to ensure both processes are working together effectively.

RECOMMENDATION 2

4.103 The Committee recommends that the ACT Government release updated pre-DA consultation guidelines containing more detailed information on best practice methods and stronger recommendations on expectations of the level of required community consultation.

RECOMMENDATION 3

4.104 The Committee recommends that the ACT Government consider expanding the types, scale and/or locations of developments which require pre-DA consultation, in line with community feedback.

RECOMMENDATION 4

4.105 The Committee recommends that the ACT Government require proponents to provide with their DA a report on pre-DA consultation with the community, including any actions taken by the proponent as a result of community feedback, and that this be released at public notification of the DA.

RECOMMENDATION 5

4.106 The Committee recommends that the pre-DA guidelines require public meetings to conducted with adequate notice and that all affected stakeholders, including residents and traders are informed.

RECOMMENDATION 6

4.107 The Committee recommends that the ACT Government works with industry and professional bodies to provide training for consultants and the development industry on best practice approaches to pre-DA consultation.

RECOMMENDATION 7

5.17 The Committee recommends that the Directorate utilise social media avenues to notify the ACT community of Development Applications that are likely to be of wide community interest, such as Development Applications that received high community interest during pre-DA consultation.

RECOMMENDATION 8

5.34 The Committee recommends that more complex and higher-impact Development Applications are more widely notified and are given a longer notification period.

RECOMMENDATION 9

5.35 The Committee recommends that, in addition to current special arrangements, that when Development Applications are put on public notification over the Christmas period, the days between the 20 December and 10 January are not to be counted as part of the notification period.

RECOMMENDATION 10

5.36 The Committee recommends that the ACT Government consider amending the *Planning and Development Act* 2007 to harmonise the representation processes for initial development application public notification and development applications undergoing reconsideration so that different systems and approaches are not taken.

RECOMMENDATION 11

5.45 The Committee recommends that the Directorate includes a colour image of the proposed development on Development Application signage where the Development Application proposes significant building works.

RECOMMENDATION 12

5.61 The Committee recommends that the Directorate expediate improvements to the Development Application Finder App.

RECOMMENDATION 13

5.62 The Committee recommends that the Directorate provide a desktop version of the Development Application Finder App, or provide an alternative method for individuals and community organisations to sign up for email notifications of new Development Applications in particular areas.

RECOMMENDATION 14

6.22 The Committee recommends that funding is provided to the Combined Community Councils of the ACT or Environment Defenders' Office to provide an advisory service to help community members engage effectively with Development Application and other planning processes.

RECOMMENDATION 15

6.43 The Committee recommends that the *Planning and Development Act* 2007 is amended to clarify the test for when amended Development Applications must be renotified to the community, particularly in cases where design changes alter the appearance of the development from public areas.

RECOMMENDATION 16

6.44 The Committee recommends that the *Planning and Development Act* 2007 is amended to provide for re-notification of a development where further information or corrections significantly alter the proposal.

RECOMMENDATION 17

6.56 The Committee recommends that the Directorate conduct a review of the structure of the Notice of Decision and the way conditions on approvals are communicated and applied.

RECOMMENDATION 18

6.67 The Committee recommends that the Directorate develop a suite of 'How To' fact sheets for the community and proponents on common topics that come up when interacting with the Development Application process.

RECOMMENDATION 19

6.68 The Committee recommends that the Directorate develops 'How To' fact sheets for reviewing and commenting on development applications, including guidance on key documents community members should access in an application and what needs to be contained in any comment on an application. A link to relevant fact sheets should be included with each Development Application on the website and on the Development Application Finder App.

RECOMMENDATION 20

6.69 The Committee recommends that the Directorate develop a fact sheet that provides a glossary of key planning terms, and include a link to it with each Development Application on the website and on the Development Application Finder App.

RECOMMENDATION 21

6.70 The Committee recommends that the Directorate develop a fact sheet that provides provide guidance to the community and applicants on key features of the Territory Plan, such as the interaction between rules, criteria and objectives. A link to the fact sheet should be included with each Development Application on the website and on the Development Application Finder App.

RECOMMENDATION 22

6.71 The Committee recommends that the Directorate develop a 'How To' fact sheet for interpreting Notices of Decision and provide a link to it with each Notice of Decision.

RECOMMENDATION 23

6.72 The Committee recommends that the Directorate develop a fact sheet that provides guidance for community members and groups in relation to appealing a decision on a Development Application and provide a link to it with each Notice of Decision.

RECOMMENDATION 24

6.73 The Committee recommends that the Directorate develop a fact sheet that provides guidance for community members about the interaction between heritage matters and Development Applications, and provide a link to it with each Development Application on the website and on the Development Application Finder App.

RECOMMENDATION 25

6.74 The Committee recommends that the Directorate develop a fact sheet on the planning compliance complaint process, and provide a link to it on the Directorate website, on the Access Canberra complaint form, in the Development Application Finder App and when a complaint is received.

RECOMMENDATION 26

6.97 The Committee recommends that the naming convention for files submitted and contained within Development Applications be reviewed to give members of the public a clearer understanding of what each file contains.

RECOMMENDATION 27

6.109 The Committee recommends that public notification documents are kept publicly available on the Directorate website, the ACTMAPi 'Development' tab and on the Development Application Finder App for a period of five years after the date of public notification.

RECOMMENDATION 28

6.110 The Committee recommends that Approved Plans and Notices of Decision are kept publicly available on the Directorate website, the ACTMAPi 'Development' tab and on the Development Application Finder App for a period of five years after the date of the Notice of Decision.

RECOMMENDATION 29

6.111 The Committee recommends that deidentified representations are made available to all parties to the Development Application process, including objectors and the wider community, following the end of the notification period.

RECOMMENDATION 30

7.9 The Committee recommends that the Directorate undertake a 'track check' as part of every completeness check or pre-assessment process to ensure Development Applications are lodged in the correct track.

RECOMMENDATION 31

7.10 The Committee recommends that if information is provided following the notification period that changes the assessment track, the assessment process should start again from the completeness check stage and public notification should be re-conducted.

RECOMMENDATION 32

7.15 The Committee recommends that Development Applications where the environmental impact cannot yet be determined but where there is a reasonable possibility that the impact, once assessed, would require it to be assessed in the Impact Track, should be assessed in the Impact Track.

RECOMMENDATION 33

7.54 The Committee recommends the Directorate consider changing the process for lease variations so that Development Applications for lease variations are required to be submitted together with any Development Application required to implement the lease variation. The Lease Variation Charge would not be payable until the approval of the Development Application.

RECOMMENDATION 34

7.86 The Committee recommends that the *Planning and Development Act* 2007 is amended to allow for the rejection of Development Applications which contain false or misleading information.

RECOMMENDATION 35

7.103 The Committee recommends that the Directorate urgently work with industry and professional groups on solutions to combat the high first-time failure rate for completeness checks, and consider options like regular training sessions, additional e-Development functionality and better information for applicants.

RECOMMENDATION 36

7.104 The Committee recommends that the completeness check process is expanded to include a check of the accuracy of key elements such as scale, north orientation and the plot ratio calculation.

RECOMMENDATION 37

7.105 The Committee recommends that a note is placed on each public notification document stating that the document is as supplied by the applicant and has not yet been assessed by the ACT Government. This note should also provide contact details for the community to notify the Directorate if any errors are identified.

RECOMMENDATION 38

7.110 The Committee recommends that the Directorate consider additional customer service training for staff engaged in customer service roles.

RECOMMENDATION 39

7.127 The Committee recommends that the Directorate expediate the update of the e-Development portal.

RECOMMENDATION 40

7.128 The Committee recommends that the Directorate consider incorporating 'real time' tracking, contact and feedback elements into e-Development.

RECOMMENDATION 41

7.150 The Committee recommends that referral entity advice is made available to all parties to the Development Application process, including objectors and the wider community, following the end of the referral period.

RECOMMENDATION 42

7.153 The Committee recommends that the Directorate require assessing officers to undertake pre-decision site visits for all developments for which representations are submitted.

RECOMMENDATION 43

7.173 The Committee recommends that the Directorate, in conjunction with the Transport Canberra and City Services Directorate, the Environmental Protection Authority and Worksafe ACT, undertake random audits of construction sites and enforce traffic management plans; ensure safe pedestrian passage; and enforce working hours and noise levels.

RECOMMENDATION 44

7.174 The Committee recommends that for developments in suburban residential areas, construction parking and access plans for trade and heavy vehicles are submitted as part of a DA, and that these plans remain accessible on the Directorate's website until construction is complete.

RECOMMENDATION 45

7.175 The Committee recommends that for developments in suburban residential areas, plans for the protection of the verge and street trees during construction within a certain range of the development are submitted as part of DA, and that these plans remain accessible on the Directorate's website until construction is complete.

RECOMMENDATION 46

7.217 The Committee recommends that the allocated processing time for Merit and Impact Track Development Applications is modified so that the time for assessment reflects the complexity of the development.

RECOMMENDATION 47

7.242 The Committee recommends that the ACT Government continue efforts to improve Development Application processing times, and urgently consider a further funding increase to enable the Directorate to meet the demands inherent in future increases in development activity in the ACT.

RECOMMENDATION 48

7.264 The Committee recommends that the Directorate charge a higher Development Application fee for retrospective Development Applications where the retrospective Development Application is being sought by the same person who undertook the development without approval

RECOMMENDATION 49

8.25 The Committee recommends that the ACT Government continue to support third party appeal rights for planning decisions, including those relating to Merit and Impact track Development Applications.

RECOMMENDATION 50

8.41 The Committee recommends that sanctions are applied to developers who begin work prior to the end of the appeal period for an approved Development Application.

RECOMMENDATION 51

8.52 The Committee recommends that the Directorate work with the ACT Civil and Administrative Tribunal on ways to increase the accessibility of ACT Civil and Administrative Tribunal decisions, orders and associated documents related to Development Application appeals, for example linking them to the relevant Development Application on the Directorate's website.

RECOMMENDATION 52

8.73 The Committee recommends that the ACT Government pilot an opt-in design-led mediation option outside of the ACT Civil and Administrative Tribunal for objections that could be resolved by modest design changes.

RECOMMENDATION 53

9.16 The Committee recommends that, to minimise any conflict of interest, that the Directorate consider establishing a pool of independent environmental experts who are assigned by the ACT Government to undertake peer reviews of Environmental Impact Statements, Environmental Impact Statement Exemptions and other environmental assessment documents submitted with Development Applications lodged in the Merit or Impact tracks.

RECOMMENDATION 54

9.32 The Committee recommends that workflows of Environment Significance Opinions be incorporated into e-Development.

RECOMMENDATION 55

9.44 The Committee recommends that the Territory Plan Review reviews the process for considering registered and regulated trees during Development Application assessment.

RECOMMENDATION 56

9.54 The Committee recommends that the Directorate take steps to make the Heritage Register fully searchable.

RECOMMENDATION 57

9.69 The Committee recommends that the ACT Government commission an external review of the capability and resourcing of the Heritage Council and Heritage Unit to ensure they can meet their statutory and other responsibilities.

RECOMMENDATION 58

9.75 The Committee recommends that the Territory Plan Review reviews the process for considering heritage matters during the Development Application assessment process.

RECOMMENDATION 59

9.76 The Committee recommends that the Directorate require pre-application consultation with the Heritage Unit for developments that affect a heritage place or object.

RECOMMENDATION 60

9.77 The Committee recommends that the National Capital Design Review Panel include a member with independent heritage expertise when considering Development Applications that include heritage matters.

RECOMMENDATION 61

10.50 The Committee notes the more robust approach to planning enforcement that commenced during the conduct of this Inquiry, and recommends that the ACT Government maintain and strengthen this approach.

RECOMMENDATION 62

10.51 The Committee recommends that Access Canberra business processes are changed to ensure that following a planning related complaint being made, the complainant is kept informed of the status of their complaint.

RECOMMENDATION 63

10.52 The Committee recommends that Access Canberra's resources are further expanded to ensure a higher level of customer service can be provided to complainants without reducing their inspection and compliance effort.

RECOMMENDATION 64

11.16 The Committee recommends that the Territory Plan Review consider whether the Merit Track should be changed so that Development Applications are not just assessed against minimum standards (tick and flick approach) but are also assessed on the overall outcome of the development.

RECOMMENDATION 65

11.17 The Committee recommends that the Territory Plan Review consider the role of simple rules versus flexible criteria.

RECOMMENDATION 66

11.24 The Committee recommends that the Territory Plan Review rectify the disconnect between the Development Application process, as per the Territory Plan, and key design and character elements that are articulated in master plans, planning refresh's and zone objectives.

1 INTRODUCTION

CONDUCT OF INQUIRY

1.1 At a private meeting on 14 March 2018, the Committee resolved to undertake an Inquiry into Development Application Processes in the ACT.

1.2 The Committee announced its inquiry in the Assembly on 22 March 2018 and distributed a media release on the same day. The Committee received 66 submissions and a list of these is provided at Appendix B.

1.3 The Committee held two public hearings and heard from 40 witnesses. A list of witnesses who appeared before the Committee is provided at Appendix A. The transcripts of proceedings are accessible at http://www.hansard.act.gov.au/hansard/2017/comms/default.htm#planning.

1.4 There was one Question Taken on Notice at the public hearings and this is listed in Appendix C. There were 18 Questions on Notice related to the public hearings and these are also listed in Appendix C. Answers to these questions are available on the inquiry webpage: https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-planning-and-urban-renewal/inquiry-into-engagement-with-development-application-processes-in-the-act.

1.5 The Committee acknowledges that since it initiated this inquiry there have been changes to elements of the Development Application (DA) process in the ACT. Some have sought to ameliorate delays and inefficiencies in the process, whilst others have attempted to improve accessibility and consultation. Whilst the Committee has been somewhat critical of the timeliness of these changes, as well as the disconnect that exists between stakeholders, the lack of consistency in process and decision making, and the inadequate levels of accountability, transparency and accessibility in the DA process, the Committee recognises that there are budgetary measures in train which will enable future improvements in line with a number of the Committee's recommendations.

1.6 Throughout the inquiry, the Committee noted significant concerns about quality control and compliance within the DA process, the adverse impact of constant delays, the conflicting understandings of the DA process by stakeholders and the coherence of the planning system. The Committee's recommendations, whilst reflective of the various views of industry and the ACT community, were formulated and seen as achievable during a period where the future of the construction industry was on the rise. However, with the unprecedented COVID-19 crisis occurring subsequent to the drafting of the report, the urgency of many of the Committee's recommendations are not as definitive.

1.7 Whilst the Committee stands by its recommendations, it is of the view that in the context of a slowing economy and an uncertain future for many sectors of the community, that the priorities for improving and facilitating a more coherent DA process in the ACT will have changed. Consequently, the Committee acknowledges that a balance needs to be achieved between implementing much needed improvements to the DA process, and ensuring that the DA process is able to help facilitate the required level of economic stability and employment within the development and construction sector that is imperative to the economic recovery of the ACT as it emerges from the COVID-19 crisis.

ACKNOWLEDGEMENTS

1.8 The Committee would like to thank the Minster for Planning and Land Management and officials from the Environment, Planning and Sustainable Development Directorate (the Directorate) for their time appearing before the Committee and responding to its questions.

1.9 The Committee would like to extend its thanks to those who took the time to make written submissions and to those witnesses who appeared before the Committee.

2 ACT PLANNING FRAMEWORK

2.1 This chapter outlines the planning framework in the Australian Capital Territory (ACT).

LEGISLATION AND PLANNING DOCUMENTS

2.2 The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) sets out the overarching legal framework for the planning of, and management of the land in, the Australian Capital Territory.[3] It establishes the National Capital Authority (NCA), one of the functions of which is to prepare and administer a National Capital Plan (NCP).[4] The objective of the NCP is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.[5]

2.3 The *Australian Capital Territory (Planning and Land Management) Act 1988* also provided for the ACT Legislative Assembly to make laws to establish a Territory planning authority, and to confer on that authority the function of preparing and administering a Territory Plan.[6] These requirements were incorporated into the *Interim Planning Act 1990* (ACT)[7] and subsequently, with expanded environmental assessment and heritage provisions, into the *Land (Planning and Environment) Act 1991* (ACT).[8]

2.4 In 2008, as part of the reform of the ACT planning system, the *Land (Planning and Environment) Act 1991* was replaced by the *Planning and Development Act* 2007 (the Act)[9], which includes the provision for the Planning and Land Authority,[10] and the Territory Plan.[11]

PLANNING AND DEVELOPMENT ACT 2007

2.5 The key piece of planning legislation in the ACT is the *Planning and Development Act* 2007 (the Act), which is administered by the Environment, Planning and Sustainable Development Directorate (EPSDD).[12] It is supplemented by the Planning and Development Regulation *2008* which facilitates the object of the Act.

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[3] Accessible at https://www.legislation.gov.au/Details/C2016C00482.

[4] *Australian Capital Territory (Planning and Land Management) Act 1988*, sections 5 and 6.

[5] *Australian Capital Territory (Planning and Land Management) Act 1988*, section 9.

[6] *Australian Capital Territory (Planning and Land Management) Act 1988*, section 25.

[7] Accessible at http://www.legislation.act.gov.au/a/1990-59/default.asp.

[8] Accessible at http://www.legislation.act.gov.au/a/1991-100/default.asp.

[9] Accessible at http://www.legislation.act.gov.au/a/2007-24/current/pdf/2007-24.pdf.

[10] *Planning and Development Act* 2007, section 10.

[11] *Planning and Development Act* 2007, section 46.

[12] Territory Plan and the National Capital Plan, https://www.planning.act.gov.au/planning-our-city/territory_plan/territory-plan-and-the-national-capital-plan, Accessed 10 February 2020.

AUSTRALIAN CAPITAL TERRITORY PLANNING AND LAND MANAGEMENT ACT 1988

2.6 The key piece of Commonwealth legislation dealing with planning and approvals is the *Australian Capital Territory Planning and Land Management Act* 1988. This legislation is administered by the NCA.[13]

PLANNING AND DEVELOPMENT (BILATERAL AGREEMENT) AMENDMENT ACT 2014

2.7 This legislation enables the ACT to sign up to the Australian government's one-stop shop for environmental approvals that will accredit state and territory environmental planning systems under the Commonwealth's *Environment Protection and Biodiversity Conservation Act,* or EPBC Act, to create a single environmental assessment and approval process for nationally protected matters in each state and territory.

ACT PLANNING STRATEGY

2.8 The ACT Planning Strategy 2018 (the Strategy) outlines a strategic vision for planning in the ACT and provides the framework for a range of actions that will allow the city to respond to change locally, regionally and globally.[14]

STATEMENT OF PLANNING INTENT

2.9 Under the *Planning and Development Act* 2007, the Minister for Planning may set out the main principles that are to govern planning and land development in the ACT through a written statement, the Statement of Planning Intent. The Environment and Planning Directorate must perform its functions taking the Statement into consideration.[15]

2.10 The Statement of Planning Intent establishes four key planning priorities, and associated actions:

- Creating sustainable, compact and liveable neighbourhoods with better transport choices;
- Delivering high quality public spaces and streets through placemaking;

[13] Environment, Planning and Sustainable Development Directorate – Planning, 'Territory Plan and the National Capital Plan,' https://www.planning.act.gov.au/planning-our-city/territory_plan/territory-plan-and-the-national-capital-plan, Accessed 10 February 2020.

[14] ACT Government, 'ACT Planning Strategy 2018,' https://www.planning.act.gov.au/__data/assets/pdf_file/0007/1285972/2018-ACT-Planning-Strategy.pdf, Accessed 10 February 2020

[15] Environment, Planning and Sustainable Development Directorate – Planning, 'Minister for Planning – Statement of Planning Intent,' https://www.planning.act.gov.au/planning-our-city/statement-of-planning-intent, Accessed 10 February 2020.

- Delivering an outcome-focused planning system to reward design excellence and innovation; and
- Engaging with the community, business and research sectors to optimise planning outcomes.[16]

NATIONAL CAPITAL PLAN

2.11 The National Capital Plan (NCP) is the strategic plan for Canberra and the Territory. It ensures that 'Canberra and the Territory are planned and developed in accordance with their national significance.' The key matters of national significance include:

- The pre-eminence of the role of Canberra and the Territory as the centre of National Capital functions, and as the symbol of Australian national life and values.
- Conservation and enhancement of the landscape features which give the National Capital its character and setting, and which contribute to the integration of natural and urban environments.
- Respect for the key elements of the Griffins' formally adopted plan for Canberra.
- Creation, conservation and enhancement of fitting sites, approaches and backdrops for national institutions and ceremonies as well as National Capital uses.
- The development of a city which both respects environmental values and reflects national concerns with the sustainability of Australia's urban areas.[17]

2.12 In accordance with Section 10 of the *Australian Capital Territory (Planning and Land Management) Act* 1988, the NCP sets out the broad planning principles and policies for Canberra and the Territory, and detailed conditions of planning, design and development for the 'Designated Areas' because of their particular importance to the special character of the national capital. The detailed conditions of planning, design and development are set out in the NCP. Works Approval for development within the 'Designated Areas' is the responsibility of the NCA.[18]

2.13 The NCA has administrative responsibility for control of development on designated land, which is identified in the NCP, as being "areas of land that have the special characteristics of the National Capital".[19]

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[16] Environment, Planning and Sustainable Development Directorate – Planning, 'Minister for Planning – Statement of Planning Intent,' https://www.planning.act.gov.au/planning-our-city/statement-of-planning-intent, Accessed 10 February 2020.

[17] National capital Authority, 'National Capital Plan,' https://www.nca.gov.au/planning-heritage/national-capital-plan, Accessed 10 February 2020.

[18] National Capital Authority, 'National Capital Plan,' https://www.nca.gov.au/planning-heritage/national-capital-plan, Accessed 10 February 2020.

[19] Environment, Planning and Sustainable Development Directorate – Planning, 'Territory Plan and the National Capital Plan,' https://www.planning.act.gov.au/planning-our-city/territory_plan/territory-plan-and-the-national-capital-plan, Accessed 10 February 2020.

MASTER PLAN

2.14 A master plan is a non-statutory document that sets out how a particular area can (as opposed to will) develop and redevelop into the future. It sets out objectives and strategies to manage development and change over time and defines what is important about a place and how its character and quality can be conserved, improved and enhanced.

2.15 In Canberra, the EPSDD prepares and periodically reviews master plans for all group centres, key transport corridors and areas adjacent to town centres.

2.16 Implementation of a master plan may involve:

- Territory Plan variations;
- Sale of territory owned land;
- Capital works;
- Realisation of industry opportunities identified within the master plan; and
- Further community consultation.[20]

TERRITORY PLAN

2.17 The key statutory planning document used by EPSDD is the Territory Plan, which provides the policy framework for the administration of planning in the ACT. The purpose of the Territory Plan is to manage land use change and development in a manner consistent with strategic directions set by the ACT Government, Legislative Assembly and the community.[21]

2.18 The Territory Plan commenced operation on 31 March 2008 and under the Act:

> The object of the territory plan is to ensure, in a manner not inconsistent with the national capital plan, the planning and development of the ACT provide the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.[22]

2.19 Under section 50 of the Act, the:

> Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan.[23]

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[20] Environment, Planning and Sustainable Development Directorate – Planning, 'Master Plans,' https://www.planning.act.gov.au/planning-our-city/planning-projects/master-plans, Accessed 10 February 2020.

[21] Environment, Planning and Sustainable Development Directorate – Planning, 'Territory Plan and the National Capital Plan,' https://www.planning.act.gov.au/planning-our-city/territory_plan/territory-plan-and-the-national-capital-plan, Accessed 10 February 2020.

[22] *Planning and Development Act* 2007, section 48.

[23] *Planning and Development Act* 2007, section 50.

2.20 The Act requires the Territory Plan to set out the planning principles and policies for effecting its objective in a way that gives effect to sustainability principles, including policies that contribute to achieving a healthy environment in the ACT.[24]

2.21 The Territory Plan includes:

- a statement of strategic directions;
- a map;
- objectives and development tables applying to each zone;
- a series of general, development and precinct codes; and
- structure plans and concept plans for the development of future urban areas.

2.22 Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan, which are prepared by the Planning and Land Authority, currently under the auspices of the Directorate, for stakeholder consultation and comment.[25]

CODES, RULES AND CRITERIA

2.23 There are three types of codes in the Territory Plan: Precinct, Development and General.

- Precinct Codes contain special provisions that apply to individual suburbs or geographical areas, for instance setbacks, active frontages and building height limits. They can also list additional land uses that may be permitted or prohibited in a particular location. Each Precinct Code has a Precinct Map showing the areas where the Precinct Code applies.[26]
- Development Codes contain the majority of the planning controls applying to a specific zone or type of development, e.g. Single Dwelling Housing Development Code or Commercial Zones Development Code. They contain the provisions that apply to all developments of that type.[27]
- General Codes contain provisions that address particular planning and design issues and may relate to any kind of development across any of the zones, e.g. Access and Mobility General Code or Parking and Vehicular Access General Code.[28]

[24] *Planning and Development Act* 2007, section 49.

[25] *Planning and Development Act* 2007, Part 5.3.

[26] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,' https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

[27] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,', https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

[28] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,', https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

2.24 If there is any inconsistency between applicable codes, then the Precinct Code will always take precedence over the Development Code, which in turn takes precedence over the General Code.[29]

2.25 The Territory Plan codes are divided into rules and criteria.

- Rules provide definitive controls for development. If a provision contains only a rule without any applicable criteria, then the rule is mandatory.[30]
- Criteria provide the qualitative controls for development. Development may be considered against criteria if the corresponding rule has not been met, or if there is no applicable rule.[31]

2.26 If developments meet all the relevant rules of the Territory Plan, it may be exempt from requiring a development approval. This applies to developments listed as exempt under the relevant development table.[32]

2.27 Developments that are unable to meet all the relevant rules, but can meet the criteria, are required to lodge a development application and be assessed against the rules and criteria of the Territory Plan.[33]

OVERLAYS, ZONES, OBJECTIVES

2.28 The Territory Plan uses zones to specify the planning controls for a particular area or block of land. These zones determine how the land can be used and what can be built.[34]

2.29 There are 23 different zones which are divided into seven main groups:

- Residential
- Commercial
- Industrial
- Community facility
- Parks and recreation
- Transport and services

[29] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,' https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

[30] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,' https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

[31] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,' https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

[32] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,' https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

[33] Environment, Planning and Sustainable Development Directorate – Planning, 'Codes,', https://www.planning.act.gov.au/planning-our-city/territory_plan/codes, Accessed 10 February 2020.

[34] Environment, Planning and Sustainable Development Directorate – Planning, 'Zones and overlays,' https://www.planning.act.gov.au/planning-our-city/territory_plan/zones-and-overlays#objectives, Accessed 10 February 2020.

- Non-urban zones[35]

2.30 Overlays apply to areas that have special controls in place; for example, public land reserves, future urban areas, or areas with special requirements under the NCP. They inform the user that additional provisions apply, for instance, plans of management for public land areas or NCP requirements.[36]

2.31 Each zone of the Territory Plan has a development table which contains the zone objectives and, among other things, a list of permissible (subject to a development application) and prohibited development within that zone.[37]

2.32 The development table outlines:

- Whether a development is exempt, meaning development can occur without lodging a development application;
- Whether a development is prohibited - you cannot apply for approval of a prohibited development; and,
- Which assessment track the development application will be assessed in - code, merit or impact. [38]

2.33 The objectives of each zone are derived from the Territory Plan's statement of strategic directions. They set out the purpose for the zone and broadly determine which uses are suitable or prohibited and provisions that regulate development.[39]

[35] Environment, Planning and Sustainable Development Directorate – Planning, 'Zones and overlays,' https://www.planning.act.gov.au/planning-our-city/territory_plan/zones-and-overlays#objectives, Accessed 10 February 2020.

[36] Environment, Planning and Sustainable Development Directorate – Planning, 'Zones and overlays,' https://www.planning.act.gov.au/planning-our-city/territory_plan/zones-and-overlays#objectives, Accessed 10 February 2020.

[37] Environment, Planning and Sustainable Development Directorate – Planning, 'Zones and overlays,' https://www.planning.act.gov.au/planning-our-city/territory_plan/zones-and-overlays#objectives, Accessed 10 February 2020.

[38] Environment, Planning and Sustainable Development Directorate – Planning, 'Zones and overlays,' https://www.planning.act.gov.au/planning-our-city/territory_plan/zones-and-overlays#objectives, Accessed 10 February 2020.

[39] Environment, Planning and Sustainable Development Directorate – Planning, 'Zones and overlays,' https://www.planning.act.gov.au/planning-our-city/territory_plan/zones-and-overlays#objectives, Accessed 10 February 2020.

3 ACT DEVELOPMENT APPLICATION PROCESSES, ASSESSMENTS AND APPROVALS

3.1 This chapter outlines the Development Application Process that currently applies in the Australian Capital Territory (ACT).

REQUIREMENT FOR A DEVELOPMENT APPLICATION (DA)

3.2 New developments, including development on an existing property may require a development approval. Landowners must first determine whether a development application (DA), a building application (BA) or another type of approval is needed.[40]

3.3 To understand the limitations of development and building on land, landowners must determine if they face any limitations to development. Land in the ACT is zoned for different uses. ACTMAPi is a tool that can assist in determining what type of development is allowed, and which development codes apply.[41]

3.4 If a DA is required, the landowner is responsible for preparing the approval application, including plans of the work. The landowner must also apply for a DA and pay the required fees.[42]

3.5 The ACT planning system has a track-based system for assessing developments that require approval. There are several factors that determine which track a development falls into.

- Code track: these apply to simpler developments that meet all relevant rules in the Territory Plan. Code tracks do not require public notification, but neighbours should be notified.
- Merit track: these apply to most developments, including development in a residential zone, indoor recreation facility in a commercial zone, carrying a lease, multi-unit and commercial developments, and single houses. Applications must be publicly notified. The Planning and Development Act Regulation determines whether a development application undergoes major or minor notification.
- Impact track: these apply to developments that may have a major impact on the environment of the ACT, or on an endangered species or ecological community. Impact track applications undergo the broadest level of assessment in comparison to merit and

[40] ACT Government, 'Do I need approval?,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/do-i-need-approval, Accessed 10 February 2020.

[41] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications, Accessed 10 February 2020.

[42] ACT Government, 'Regulatory Fees,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/regulatory-fees, Accessed 10 February 2020.

code tracks. One example of an impact track could include the construction of a major dam.[43]

3.6 The Act requires that the proponent for a proposed development determine the appropriate assessment track, prior to lodgement. Once an application has been lodged in a particular track, it must meet the requirements for that track or be refused. There is no scope to change an assessment track (refer to Section 114(3) of the Act).[44]

3.7 A landowner should consider pre-application information. This is either a meeting or formal advice in relation to development applications.

3.8 Pre-application meetings discuss a development proposal prior to lodgement, and these are a free ACT Planning and Land Authority service.

3.9 Pre-application advice in relation to development proposals may be obtained in writing under section 138 of the *Planning and Development Act* 2007. This advice expires six months after the day it is given, and there is a fee for this service.[45]

PROHIBITED DEVELOPMENT

3.10 There are two main types of prohibited development:

- uses identified under the relevant development tables of the Territory Plan; and
- development by an entity other than the Territory or a Territory authority in a future urban area, unless the structure plan for the area states otherwise.[46]

3.11 If a development is prohibited a DA cannot be lodged. However there are some very specific instances where a DA would be considered:

- If a development is authorised by a development approval and subsequently becomes prohibited, then the development can continue;
- If a development use is authorised under a Crown lease, but beginning the use is a prohibited development, then a DA can be considered if lodged in the impact track; or,
- Some uses that would otherwise be prohibited may be assessed in the merit track if they can be defined as an ancillary or minor use.[47]

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[43] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

[44] *Planning and Development Act* 2007, section 114(3).

[45] Environment, Planning and Sustainable Development Directorate – Planning, 'Pre-application information,' https://www.planning.act.gov.au/development_applications/da_assessment/pre-application. Accessed 10 February 2020.

[46] ACT Government, 'Prohibited developments,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/prohibited-developments. Accessed 10 February 2020.

[47] ACT Government, 'Prohibited developments,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/prohibited-developments. Accessed 10 February 2020.

EXEMPT DEVELOPMENT

3.12 For some houses and projects DAs are not required if certain requirements are met, although these will vary according to the type of project.

3.13 A complete list of developments that are exempt from development approval and the relevant criteria and requirements can be found in Schedule 1 of the Planning and Development Regulation 2008.

3.14 While some developments may be exempt from development approval, they may still require building approval. A building certifier can issue a building approval without a development approval if they are satisfied that:

- Building work that does not have a development approval meets the relevant development exemption criteria and does not require a development application.
- Related sitework, such as tree protection and tree removal and excavation required for the building work shown in a building approval application is either:
  - exempt from requiring development approval, if the exemption requirements for the building work also require the sitework to be exempt; or
  - the relevant building work is in accordance with a development approval.[48]

3.15 Certifiers are prohibited from issuing a building approval where a development application is required for the building work but is not in force. A building certifier cannot issue a development approval if one is needed.[49]

3.16 General exemption criteria must be met for all development approval exemptions:

- The development must not be located in an easement (proposed or existing), utility infrastructure access or protection space without the written permission from whoever owns that space (e.g. a utility).
- A development must not interfere with plumbing and drainage clearances.
- The development must not breach the Tree Protection Act 2005 or cause any part of a building or structure (other than a class 10 building or structure) to be on heritage listed property or property which is the subject of a heritage agreement.
- The development must comply with the lease.
- The development must not increase the number of dwellings on a block to two or more dwellings.

[48] ACT Government, 'Exempt work,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/exempt-work. Accessed 10 February 2020.

[49] ACT Government, 'Exempt work,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/exempt-work. Accessed 10 February 2020.

- The development must comply with any other criteria that apply to the development.[50]

3.17 Buildings and structures can be exempt from both development approval and building approval if the proposed work involved in the alterations to the building/structure does not adversely affect:

- the structural integrity of any part of a building for which a certificate of occupancy and use has been issued;
- a fire-rated wall, ceiling or floor;
- a ventilation or air-handling system, fire protection system or other mechanical service;
- a fire escape, emergency lift, stairway, exit or exit passageway;
- the natural light or ventilation available to a building; and
- the building in a way that reduces its compliance with the Building Code to below minimum requirements.[51]

REQUIREMENT FOR A BUILDING APPROVAL (BA)

3.18 Some projects will require a building approval and a development approval. The building approval cannot be approved and issued until you have a development application approval.

3.19 Building approval is required for developments involving building, altering, adding to, or demolishing a building.

3.20 Building approval ensures that proposed building work complies with building laws, will be structurally sound, and ensures that building work will provide the required levels of fire resistance, amenity, energy efficiency, and access for people with disabilities if required.

3.21 If a BA is required, the landowner must appoint a licensed building surveyor as a certifier, and prepare the building approval application, including plans and specifications for the work. They must then complete and lodge required forms and pay the relevant fees. [52]

3.22 Under new reforms there is now a code of practice for building surveyors.[53] The code sets out minimum standards of practice for building surveyors when they are undertaking licensable functions.

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[50] ACT Government, 'Exempt Work,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/exempt-work. Accessed 10 February 2020.

[51] ACT Government, 'Exempt Work,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/exempt-work. Accessed 10 February 2020.

[52] ACT Government, 'Building Approval,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/building-approval, Accessed 10 February 2020.

[53] Accessible at https://www.legislation.act.gov.au/View/di/2019-174/current/PDF/2019-174.PDF.

3.23 A new documentation guideline for building approval applications[54] covers minimum documentation and information for building approval applications for class 2-9 buildings.

3.24 Under the BA process a landowner must apply for building approval and pay the relevant fees.[55] For work that requires a licensed builder, the landowner must engage a licensed builder or become licensed as an owner-builder. [56] Landowners must ensure that the people they hire have the correct licenses and insurance to complete the work and should check the disciplinary register.[57]

3.25 From 1 May 2011 most new buildings and alterations to certain pre-existing buildings must also comply with the Disability (Access to Premises — Buildings) Standards 2010 (Access standards) made under the Commonwealth's *Disability Discrimination Act* 1992 (DDA).[58]

OTHER APPROVALS

3.26 It is the responsibility of the landowner to ensure that relevant approvals are sought at the correct time.

3.27 In addition to development applications and building approvals there are various approvals and inspections required for:

- plumbing or drainage work;
- electrical work; and
- gas fitting work.[59]

3.28 Approvals may also be needed for:

- works that may have significant environmental or heritage impact;
- unit titling;
- changing a concessional lease;
- changing a Crown lease; and
- designated areas under the control of the National Capital Authority (NCA).[60]

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[54] Accessible at https://www.legislation.act.gov.au/View/di/2019-178/current/PDF/2019-178.PDF.

[55] ACT Government, 'Regulatory fees,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/regulatory-fees. Accessed 10 February 2020.

[56] ACT Government, 'Development Applications,' 'Get started'. https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/do-i-need-approval, Accessed 10 February 2020.

[57] Accessible at https://www.accesscanberra.act.gov.au/app/services/licence/#/disciplinary-register.

[58] Australian Human Rights Commission, 'Guidelines on application of the Premises Standards,' https://www.humanrights.gov.au/our-work/disability-rights/guidelines-application-premises-standards. Accessed 10 February 2020.

[59] ACT Government, 'Other approvals,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/other-approvals. Accessed 10 February 2020.

[60] ACT Government, 'Other approvals,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/other-approvals. Accessed 10 February 2020.

3.29 The following works will also need approvals:

- Work to existing trees;
- Driveways;
- Verges or nature strips;
- Stormwater easements;
- Waste management;
- Fences; and
- Pools and spas.[61]

REQUIREMENTS IN RELATION TO LEASES AND LEASE VARIATIONS

3.30 Although the Territory Plan is the overall planning document in the ACT, most of the details that are relevant to a block of land appear in the lease and development conditions for that block. The Crown lease sets out the applicable rights, obligations, and the purpose for which the land can be used.[62]

3.31 The lease and development conditions give specific information about developing a block. The information may include things such as where on the block building can occur, any restrictions on the height or appearance of the building or types of fencing, responsibilities for tree preservation, servicing, landscaping and the like. Even after building, these lease and development conditions must be considered for any future building work, such as an extension. The Lease and Development Conditions Register contains the conditions that apply to your block.[63]

3.32 To vary a lease means to add, remove or change one or more of its provisions. This does not include unit titles. Variations are defined as development in the *Planning and Development Act* 2007 and require development approval. Where a proposal includes design and siting and a lease variation, only one development application is required.[64]

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[61] ACT Government, 'Other approvals,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/other-approvals. Accessed 10 February 2020.

[62] Environment, Planning and Sustainable Development Directorate – Planning, 'Lease conditions and responsibilities,' https://www.planning.act.gov.au/leasing-and-titles/crown-leases/lease-conditions-and-responsibilities. Accessed 10 February 2020.

[63] Environment, Planning and Sustainable Development Directorate – Planning, 'Lease conditions and responsibilities,' https://www.planning.act.gov.au/leasing-and-titles/crown-leases/lease-conditions-and-responsibilities. Accessed 10 February 2020.

[64] Environment, Planning and Sustainable Development Directorate – Planning, 'Crown lease change,' https://www.planning.act.gov.au/leasing-and-titles/varying-crown-leases/crown-change-lease. Accessed 10 February 2020.

3.33 The variation of a lease is contingent on Territory Plan requirements and can include one or more of the following:

- varying the lease purpose to permit additional/alternative uses;
- varying development rights and obligations where you want, for example, to extend your gross floor area to accommodate future growth;
- subdividing a single block of land into two or more blocks of land;
- consolidating two or more blocks of land into a single block of land; and
- varying other requirements stipulated in the lease, for example, car parking.[65]

3.34 Depending on the type of variation sought, an approved variation may be executed:

- by instrument of variation registered against the title of the property – e.g. proposal involves a minor change, for example the payout of land rent; or
- by surrender of your lease and the regrant of a new lease – e.g. proposal involves a subdivision, consolidation or change in density of development.[66]

3.35 A valuation assessment (which includes a valuation report and valuation certificate) must be submitted with your development application to vary the lease. The valuation assessment submitted should address the before and after values (V1 and V2) of the lease.[67] A change of use charge may also be applicable.

REQUIREMENT FOR ENVIRONMENT ASSESSMENTS

3.36 Prior to development assessment an environmental assessment is conducted. The aim of the environmental assessment is to determine the potential impacts of a development and provide recommended conditions of development approval. The ACT and the Commonwealth have environmental assessment pathways which can apply to development on land in the ACT.

3.37 If a proposal is listed under section 123 of the *Planning and Development Act* 2007 it is likely to need environmental assessment in the ACT planning framework. There are three environmental assessment options available for ACT protected matters:

- Environmental Impact Statement (EIS);
- EIS exemption; and

[65] Environment, Planning and Sustainable Development Directorate – Planning, 'Crown lease change,' https://www.planning.act.gov.au/leasing-and-titles/varying-crown-leases/crown-change-lease. Accessed 10 February 2020.

[66] Environment, Planning and Sustainable Development Directorate – Planning, 'Crown lease change,' https://www.planning.act.gov.au/leasing-and-titles/varying-crown-leases/crown-change-lease. Accessed 10 February 2020.

[67] Environment, Planning and Sustainable Development Directorate – Planning, 'Crown lease change,' https://www.planning.act.gov.au/leasing-and-titles/varying-crown-leases/crown-change-lease. Accessed 10 February 2020.

- Environmental Significance Opinion (ESO). [68]

3.38 From an environmental perspective the Environmental Defenders' Office (EDO) noted that:

> The fragmentation of the DA process with respect to large-scale projects often has environmental implications because multiple DAs often fail to address the cumulative impacts of the project (this is despite section 124A(1)(b) defining significant adverse environmental impact including the cumulative or incremental effect of a proposed development). On the flipside, the existence of a Strategic Assessment precludes the need for EISs at each stage of the large-scale development, usually resulting in the failure to monitor ongoing impacts of a development as a project develops.[69]

ENVIRONMENTAL IMPACT STATEMENT

3.39 An Environmental Impact Statement (EIS) is required for any development application (DA) in the impact track under section 123 of the *Planning and Development Act* 2007 (unless an EIS exemption is granted).[70]

3.40 An EIS details the anticipated environmental impacts of a development on the environment as well as proposing avoidance, mitigation and offset measures.[71]

3.41 The EIS must include sufficient information to ensure that all environmental, social and economic impacts associated with the proposal have been identified and assessed, and any adverse impacts are avoided, minimised, mitigated or as a last resort, offset.[72]

3.42 An EIS is required if any of the following are applicable:

- the development is listed in Schedule 4 of the *Planning and Development Act* 2007;
- the development is listed in the relevant Territory Plan development table for the zone as impact assessable;
- the development isn't mentioned in a development table of the Territory Plan;

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[68] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Assessment,' https://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessment, Accessed 10 February 2020.

[69] Environmental Defenders' Office, *Submission 58*, pp. 8-9.

[70] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[71] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,', https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[72] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

- the Minister for Planning and Land Management declares that the impact track applies to a proposal;
- the proposed development is prohibited by the relevant development table in the Territory Plan, but an existing lease over the land already allows for that development; or
- the Minister responsible for the *Public Health Act 1997* has declared the impact track applicable.[73]

3.43 There are three major stages where a proponent is required to prepare and submit information to the planning and land authority (the Authority) in the EIS process:

- Application for EIS scoping document: The proponent submits preliminary information on the proposal. With input from referral entities, the Authority issues a scoping document which outlines the matters to be addressed in the EIS.
- Draft EIS application: The proponent prepares and lodges a draft EIS, addressing each matter raised in the scoping document. The draft EIS is publicly notified for a minimum of 20 working days.
- Revised EIS application: The proponent addresses matters raised during public notification and lodges a revised EIS. The Authority assesses the revised EIS and prepares an EIS assessment report for the Minister.[74]

3.44 A detailed guide on requirements for lodgement is provided in the EIS guidance document for proponents[75] and includes a completed Application for Environmental Impact Assessment Processes with the following attached:

- a statement outlining the objectives of the project and why it is needed;
- a completed Letter of Authorisation form, providing details and signatures of all lessees or land custodians of land to which the proposal relates; a separate form is required for each lessee/land custodian;
- a description of the proposal, including maps or plans of the site and any preliminary design drawings;
- a preliminary risk assessment (PRA) based on the EIS guidance document for proponents;
- a description of the natural conservation values of the site based on the EIS guidance document for proponents;
- a description of measures within the proposal that seek to avoid and minimise (and as a last resort offset) impacts of the proposal on any conservation values; and

[73] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[74] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[75] Accessible at https://www.planning.act.gov.au/__data/assets/pdf_file/0020/1149500/EIS-Proponents-Guide.pdf.

- information on any decision made under the EPBC Act in relation to this proposal.[76]

3.45 Once the Minister receives the revised EIS and a copy of the EIS assessment report, the Minster may:

- decide to take no action on the EIS—this completes the EIS process;
- present the EIS to the Legislative Assembly; or
- decide to establish an inquiry panel. The Minister must decide within 15 working days whether to establish an inquiry panel, and if so, receives an inquiry report within 60 days of establishing the panel. Once the panel has reported the results from the inquiry or the time for reporting has ended, the EIS process is complete.[77]

3.46 Once the EIS process is deemed complete, the proponent can lodge a development application in the impact track. A completed EIS is valid for 5 years from the completion date. An EIS Assessment Report is valid for 18 months.[78]

BILATERAL EIS

3.47 The Bilateral EIS process can apply to proposals that require both an EIS under the ACT's *Planning and Development Act* 2007 and approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act* 1999 (EPBC Act). The Commonwealth Government has accredited the ACT's EIS process through a bilateral agreement as meeting the environmental assessment requirements of the EPBC Act.[79]

3.48 If a proposal involves ACT protected matters and Commonwealth protected matters (listed under the EPBC Act) a bilateral assessment approach can be taken. If no ACT protected matters are relevant, then the proposal can be assessed under the EPBC Act before seeking development approval from the ACT (where required).[80]

3.49 If the bilateral agreement applies to a proposal, the subsequent scoping document and EIS assessment report will be prepared by the ACT with input from the Commonwealth

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[76] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[77] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[78] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[79] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[80] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Assessment,' https://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessment, Accessed 10 February 2020.

Government. The final EIS assessment report prepared by the Authority and endorsed by the ACT Minister is provided to the Commonwealth Department of the Environment and Energy for use in their approval process under the EPBC Act.[81]

3.50 Once the EIS process is complete, an impact track development application for the proposal can be submitted to the Authority for assessment. The development application process will take into account the findings and recommendations of the completed EIS and any conditions of approval related to the Commonwealth Government decision.[82]

ENVIRONMENTAL IMPACT STATEMENT EXEMPTION

3.51 A proponent can apply to the Minister to exempt a development from requiring an EIS. The Minister can grant an exemption if satisfied that the expected environment impact of the development proposal has already been sufficiently addressed by a recent study. The recent study must be less than 5 years old. [83]

3.52 An EIS exemption expires on the later of the following dates:

- if an EIS exemption application was made using a recent study that is an EIS prepared under, or an endorsed plan, policy or program under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 - when the approval expires; or
- 5 years after the day the exemption is notified.[84]

3.53 The applicant submits a draft EIS exemption application to the Planning and land authority (the Authority). Once it is accepted for lodgement, the draft EIS exemption application undergoes a public consultation period for a minimum of 15 working days. Any public submissions which are received are published on the Authority's website and provided to the proponent to consider in revising the application. Entities are also consulted during this time.[85]

3.54 An EIS exemption application must provide sufficient information to demonstrate an understanding of the potential impacts of the proposal.

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[81] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[82] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Statements,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_impact_statements. Accessed 10 February 2020.

[83] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Assessment,' https://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessment, Accessed 10 February 2020.

[84] Environment, Planning and Sustainable Development Directorate – Planning, 'Exemption from Requiring an EIS (s211),' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/exemption_from_requiring_an_eis_s211#granted, Accessed 10 February 2020.

[85] Environment, Planning and Sustainable Development Directorate – Planning, 'Exemption from Requiring an EIS (s211),' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/exemption_from_requiring_an_eis_s211#granted, Accessed 10 February 2020.

3.55 The required documentation includes a completed Application for Environmental Impact Assessment Processes (Form 1M) with the following attached:

- a statement outlining the objectives of the project and why it is needed;
- a completed Letter of Authorisation form, providing details and signatures of all lessees or land custodians of land to which the proposal relates; a separate form is required for each lessee/land custodian;
- a description of the proposal, including maps or plans of the site and any preliminary design drawings;
- a preliminary risk assessment (PRA) based on the guidance document for proponents;
- a description of the natural conservation values of the site based on the guidance document for proponents;
- a description of measures within the proposal that seek to avoid and minimise (and as a last resort offset) impacts of the proposal on any conservation values;
- sufficient detail about the previous investigations and studies supporting the application;
- details of qualifications, expertise and experience of the person(s) who conducted previous studies supporting the application;
- details of pre-lodgement public consultation undertaken; and
- information on any decision made under the Environment Protection and Biodiversity Conservation Act 1999 in relation to the proposal.[86]

3.56 The applicant has the opportunity to address matters raised during public consultation in preparing a revised EIS exemption application. The Authority assesses the revised application and prepares an EIS exemption assessment report for the Minister.

3.57 Upon receiving the revised application and EIS exemption assessment report, the Minister can make a decision to either:

- Grant the proposal an exemption from requiring an EIS if they are satisfied that recent studies sufficiently address the expected environmental impact of the proposal, whether or not the recent studies relate to the particular development proposal. In deciding whether to grant an EIS exemption, the Minister must consider any submissions received during the consultation period for the EIS exemption application. If appropriate a Minister may grant a conditional EIS exemption.[87]

[86] Environment, Planning and Sustainable Development Directorate – Planning, 'Exemption from Requiring an EIS (s211),' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/exemption_from_requiring_an_eis_s211#granted, Accessed 10 February 2020.

[87] Environment, Planning and Sustainable Development Directorate – Planning, 'Exemption from Requiring an EIS (s211),' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/exemption_from_requiring_an_eis_s211#granted, Accessed 10 February 2020.

This means that the applicant can lodge a development application in the impact track for this proposal. The EIS exemption is required to be submitted as part of any subsequent DA for assessment. If an EIS exemption is granted, the EIS exemption assessment report will be made available on the Authority's website.[88]

- Not grant an exemption if unsatisfied that the expected environmental impact has been sufficiently addressed by a recent study. The applicant may then submit a request for an EIS scoping document to commence the EIS process.[89]

ENVIRONMENT SIGNIFICANCE OPINION

3.58 An environmental significance opinion (ESO) is given by the Conservator of Flora and Fauna, the Heritage Council or the planning and land authority, that a proposal is not likely to have a significant adverse environmental or heritage impact. If an opinion is given to that effect, the proposal is taken out of the impact track, unless other reasons apply. The proponent can then submit a merit track development application or consider the exemptions available in the *Planning and Development Act* 2007.[90]

3.59 The ESO is only available for some proposals. The items that a proponent can seek an ESO for are outlined in Schedule 4 of the *Planning and Development Act* 2007, as per the following table:[91]

Item	Proposal	Agency
Part 4.2 Item 3(c) or 3(d)	Proposal for construction of a water storage dam— in the river corridor zone under the territory plan	Conservator of Flora and Fauna

[88] Environment, Planning and Sustainable Development Directorate – Planning, 'Exemption from Requiring an EIS (s211),' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/exemption_from_requiring_an_eis_s211#granted, Accessed 10 February 2020.

[89] Environment, Planning and Sustainable Development Directorate – Planning, 'Exemption from Requiring an EIS (s211),' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/exemption_from_requiring_an_eis_s211#granted, Accessed 10 February 2020.

[90] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

[91] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

Item	Proposal	Agency
	on a continuously flowing river in a non-urban zone under the territory plan	
Part 4.2 Item 11	Proposal that involves storage of the placard quantity of a dangerous substance on land, or in a building or structure on the land, that, immediately before the commencement day, was not registered in the placard quantity register.	Planning and land authority
Part 4.3 Item 1	Proposal that is likely to have a significant adverse environmental impact on 1 or more of the following: a critically endangered species an endangered species a vulnerable species a conservation dependent species a provisionally listed threatened species a listed migratory species a threatened ecological community a protected native species a Ramsar wetland any other protected matter.	Conservator of Flora and Fauna
Part 4.3 Item 2(a) or (b)	Proposal involving— the clearing of more than 0.5ha of native vegetation in a native vegetation area, other than on land that is designated as a future urban area under the territory plan	Conservator of Flora and Fauna

Item	Proposal	Agency
	the clearing of more than 5.0ha of native vegetation in a native vegetation area, on land that is designated as a future urban area under the territory plan.	
Part 4.3 Item 3	Proposal for development on land reserved under s315 for the purpose of a wilderness area, national park, nature reserve or special purpose reserve.	Conservator of Flora and Fauna
Part 4.3 Item 6	Proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the Heritage Act 2004.	Heritage Council
Part 4.3 Item 7	Proposal involving land included on the register of contaminated sites under the Environment Protection Act 1997.	Planning and land authority

3.60 If an ESO is not granted for a proposal, the proposal will be assessed in the impact track and an EIS or EIS exemption application will be required prior to development application lodgement.[92]

3.61 To apply for an ESO, the proponent must lodge a completed Application for Environmental Impact Assessment Processes (Form 1M) with the following attached:

- a statement outlining the objectives of the project and why it is needed;
- a completed Letter of Authorisation form, providing details and signatures of all lessees or land custodians of land to which the proposal relates; a separate form is required for each lessee/land custodian;

[92] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

- a description of the nature/type of project proposed by providing location map(s) of the project site(s), preliminary design drawings and satellite/aerial photographs;
- a description of the natural conservation values of the site based on the considerations listed in the Proponent's Guide to Environmental Significance Opinions (not required for an ESO application for Section 4.2 Item 11 or Section 4.3 Item 7);
- a description of measures within the proposal that seek to avoid and minimise impacts on identified conservation values; and
- information on any decision made under the *Environment Protection and Biodiversity Conservation Act* 1999 in relation to this proposal.[93]

3.62 An Assessment Officer will perform a 'completeness check' of the documentation against the requirements listed below. The completeness check is to ensure all necessary information has been provided to be able to proceed with lodgement and assessment of the application.[94]

3.63 Once a completeness check is passed, a fee needs to be paid before the ESO can be lodged and assessed. The current fees for ESOs are outlined in the Fees and Charges Booklet. In addition, section 138AC of the Act enables the relevant agency to recover costs from an application for an ESO.[95]

3.64 Once the fee is paid and the application is accepted for lodgement, the ESO application is referred to the relevant agency. The agency may request further information from the applicant at this stage.[96]

3.65 Once granted, an ESO is publicly notified and valid for 18 months. ESOs can be conditional.[97]

3.66 The ESO will be included on the ACT Legislation Register as a Notifiable Instrument (NI) under section 138AD(6) of the *Planning and Development Act* 2007.[98]

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[93] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

[94] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

[95] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

[96] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

[97] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

[98] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Significance Opinions,' https://www.planning.act.gov.au/development-applications/da_assessment/environmental_assessment/environmental_significance_opinions, Accessed 10 February 2020.

REQUIREMENTS IN RELATION TO TREE PROTECTION

3.67 Larger trees on leased land in the ACT are protected under the *Tree Protection Act*. Trees covered by *Tree Protection Act* 2005 are either Registered or Regulated Trees. Any work which may cause damage to these trees requires approval, such as tree removal, major pruning or lopping and groundwork within the Tree Protection Zone. [99]

3.68 Approval to remove trees is subject to the tree meeting the Approval Criteria determined by the *Tree Protection Act* 2005.[100]

3.69 The Transport Canberra and City Services (TCCS) Urban Trees unit is responsible for reviewing DAs that relate to trees on both private and public land.[101]

3.70 A Tree Management Plan must be provided for protected trees for proposed single residential development (code track). Tree Management Plans describe the status of the protected trees on a lease, their protection requirements and what activities are to be undertaken.[102]

3.71 Tree Management Plans are a formal requirement for any development application that involves a protected tree. Activities undertaken in accordance with an approved Tree Management Plan do not require any further approval from the Conservator.

3.72 A Tree Management Plan may be approved prior to lodging a development application or as part of the development approval process.[103]

3.73 A DA will routinely include a Landscape Management and Protection Plan (LMPP). The plan demonstrates the protection and management of assets during construction works. Trees, grass, footpaths, kerb and gutter, public lighting, and stormwater sumps are considered as assets. LMPP's must be submitted alongside DA submission documents. [104]

3.74 For larger, more complex projects, it is preferred that the DA provides Tree Impact Plans that describe the proposed works and the impacts associated with these works.[105]

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[99] City Services, 'Trees on leased land,' https://www.cityservices.act.gov.au/trees-and-nature/trees/trees-on-leased-land. Accessed 10 February 2020.

[100] City Services, 'Trees on leased land,' https://www.cityservices.act.gov.au/trees-and-nature/trees/trees-on-leased-land. Accessed 10 February 2020.

[101] ACT Government, *Submission No. 42*, p. 10.

[102] Transport Canberra and City Services, 'Proposed singled residential development (code track) tree protection advice, https://www.tccs.act.gov.au/__data/assets/pdf_file/0011/388082/Tree-Protection-Advice-Fact-Sheet.pdf, Accessed 10 February 2020.

[103] Transport Canberra and City Services, 'Proposed singled residential development (code track) tree protection advice, https://www.tccs.act.gov.au/__data/assets/pdf_file/0011/388082/Tree-Protection-Advice-Fact-Sheet.pdf, Accessed 10 February 2020.

[104] City Services, 'Landscape management and protection,' https://www.cityservices.act.gov.au/plan-and-build/building-works/landscape-management-and-protection, Accessed 10 March 2020..

[105] ACT Government, *Submission No.42*, p. 10.

3.75 The *Tree Protection Action* 2005 (section 83) states that if the Conservator of Flora and Fauna (the conservator) is satisfied that a development involves, or is likely to involve, activity that may damage a protected tree or be prohibited groundwork, the conservator may give the planning and land authority written advice about the development.[106]

3.76 The Authority may refer a development application to the conservator under the P*lanning and Development Act* 2007 (section 148). The conservator must then give advice in relation to the development application no later than 15 working days after receiving it. The conservator's advice must include tree protection requirements for each protected tree with a protection zone on, or partly on, the land subject to development.[107]

3.77 Advice may include information about the trees on the land. If required, the conservator may set out changes that should be made to any tree management plan, or a proposed tree management plan, that relates to the development application. These changes should be made in regard to the guidelines approved under section 31 of the Act, any advice put forward by the advisory panel, and anything else the conservator may consider relevant. [108]

3.78 It is an offence under Part 3 of the Tree Protection Act 2005 to undertake a tree damaging activity or groundwork activity on a Protected Tree without approval.[109]

3.79 Contravening the Act can lead to an on-the-spot fine. More serious offences can lead to court imposed penalties of up to $300,000 and a criminal record.[110]

REQUIREMENTS IN RELATION TO HERITAGE CONSULTATION

3.80 When a place or object has heritage status, the ACT Heritage Council advises on proposed development to improve conservation outcomes, and also issues Heritage Act 2004 approvals required for works to proceed.

3.81 Development that has the potential to affect the heritage values of a place includes:

- works such as demolition, building additions and alterations, changing appearance of a building, earthworks, removal of mature plantings, re-landscaping, unapproved burning or land clearing;
- a variation of a lease on the land;
- a change in use of the land for an activity not authorised by the lease; and

[106] See *Tree Protection Act* 2005, section 82; section 83; *Planning and Development Act* 2007, Division 7.3.3.

[107] See *Planning and Development Act* 2007, Division 7.3.3.

[108] Accessible at https://www.legislation.act.gov.au/View/a/2005-51/current/PDF/2005-51.PDF.

[109] City Services, 'Trees on leased land,' https://www.cityservices.act.gov.au/trees-and-nature/trees/trees-on-leased-land. Accessed 10 February 2020.

[110] City Services, 'Trees on leased land,' https://www.cityservices.act.gov.au/trees-and-nature/trees/trees-on-leased-land. Accessed 10 February 2020.

- use of unleased land that is not authorised by a permit or licence. [111]

3.82 For all proposed developments it is recommended that proponents:

- check if a place or object is afforded protection by the Heritage Act, by checking the ACT Heritage Register and ACTmapi (Heritage);
- get a copy of the Heritage Register entry and heritage guidelines, which set out heritage requirements that may affect proposed development (such as alterations, additions, new buildings, demotion, landscaping, site coverage and setbacks);
- get a copy of the Conservation Management Plan for the place if applicable;
- consider getting specialist advice when still deciding on your proposal, such as from the Heritage Advisory Service or from heritage consultants;
- seek advice about whether the proposed activity will require Heritage Act approval or development approval;
- seek advice about whether the proposal will be consistent with the heritage values of the place by emailing heritage@act.gov.au.[112]

3.83 Where development may diminish the heritage significance of a registered place or object, or damage an Aboriginal place or object, Heritage Act approval from the ACT Heritage Council is required which can include:

- Statement of Heritage Effects – where approval for heritage impacts is sought, on the basis that there are no reasonably practicable alternatives to detrimental heritage impacts.
- Excavation Permits – where archaeological excavation is required to adequately assess the heritage significance of a place and potential development impacts.[113]

3.84 Development applications for heritage places and objects are also referred to the Heritage Council for advice on:

- the effect of a development on the heritage significance; and
- ways to avoid or minimise impact on heritage significance.[114]

3.85 The Heritage Council may recommend conditions on any approval of the development, including:

- measures to conserve the heritage significance of the place or object; and

[111] ACT Government, 'Heritage,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/heritage. Accessed 10 February 2020.

[112] ACT Government, 'Heritage,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/heritage. Accessed 10 February 2020.

[113] ACT Government, 'Heritage,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/heritage. Accessed 10 February 2020.

[114] ACT Government, 'Heritage,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/heritage. Accessed 10 February 2020.

- conservation requirements under applicable heritage guidelines and/or a Conservation Management Plan.[115]

3.86 The advice of the ACT Heritage Council must be considered by the ACT Planning and Land Authority when deciding to approve or refuse a development application.

SUBMISSION OF DEVELOPMENT APPLICATIONS

3.87 Development applications and accompanying documents can by submitted via e-Development by the landowner, the builder or the design professional who has prepared the plans. In support of a development application lodgement, relevant documents must be included. Depending on the type of development and the zone specific requirements, these can include:

- Application form
- Letter of Authorisation
- Statement against relevant criteria
- Survey Certificate
- Site Plan
- Floor Plan
- Public Register Floor Plan
- Area Plan
- Sections
- Elevations
- Shadow Diagram
- Composite streetscape elevation
- Perspectives
- Colour sample Schedule
- Water sensitive urban Designs
- PRE-DA community consultation form and report
- Unapproved existing development plan
- Access and mobility plan
- Bill of quantities/summary of costs
- Landscape Plan
- Parking Plan

[115] ACT Government, 'Heritage,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/heritage. Accessed 10 February 2020.

- Turning templates
- Traffic Report
- Tree Management Plan
- Tree Survey
- Erosion and sediment control plan
- Contamination assessment/statement
- Noise management plan
- Wind assessment
- List of interested parties
- Valuation report
- Valuation certificate
- Subdivision plan
- Social, cultural and economic impact assessment report
- Hydraulics plan
- Waste and recycling management plan
- Demolition plan
- Hazardous materials survey
- Assessment of environmental effects
- Solar plan (for apartments)
- Environmental significance opinion
- Environmental Impact Statements (EIS)
- Driveway plan
- Landscape Management and Protection Plan
- National Capital Design Review Panel (NCDRP) response[116]

3.88 Checklists are available to provide assistance when preparing a development application. The checklists include:

- Minimum documentation requirements for lodgement of a development application
- Estate development plan checklist
- Home business checklist

[116] Minimum Documentation Requirements for Lodgement of a Development Application (DA), https://www.planning.act.gov.au/__data/assets/pdf_file/0009/1096911/minimum-documentation-requirements-for-lodgement-of-a-development-application.pdf. Accessed 10 February 2020.

- Public register floor plans for single residential development
- Development application naming conventions
- Waste and Recycling Management Plan[117]

COMPLETENESS CHECK

3.89 When a DA has been submitted, the ACT Government will complete a 'lodgement completeness check' against the minimum documentation requirements.

3.90 It is advised that in order to pass the completeness check that, in addition to the requisite documents, that:

- plans meet the Australian Standard AS1100
- all the details of works are included
- there is clear delineation between existing and new work
- the gross floor area is stated on the site plan
- plans are to scale
- datum ground level and height dimensions are always indicated on section plans
- shadow diagrams indicate the location of buildings and private open spaces overshadowed on adjoining blocks
- swimming pool, fences and retaining walls are included
- landscape plans (especially for larger developments) are accompanied by a schedule of all proposed trees, shrubs, groundcovers and so on.
- the development application naming conventions
- the site plans are correct
- the letter of appointment is signed by all lessees
- each document is saved as a PDF
- public register floor plans for residential and commercial applications are included
- there is a statement against relevant criteria (for merit or impact track applications)
- all plans are rotated to landscape
- all plans are uploaded separately
- where specified, plans and documentation are provided in printed form.[118]

[117] ACT Government, 'Checklists,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/building-101/checklistsAccessed 26 April 2020.

[118] ACT Government, 'Get your site plan right,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/get-your-site-plan-right; ACT Government, 'Lodge a DA,'

DEVELOPMENT APPLICATION FEES

3.91 A DA will not be considered as lodged until the relevant fee has been paid. The current determination of DA fees can be found under the Planning and Development (Fees) Determination 2019 (DI2019-133).

3.92 Section 424 of the *Planning and Development Act* 2007 permits the Minister to determine fees.

3.93 Development Application fees for all developments that have a cost of works greater than $1 million have been increased by 20 percent and exemption declaration fees have been increased from $308 to $600. This increase in fees will allow for the expansion of the Merit Assessment Team and website management to better meet customer expectations.[119]

3.94 DA fees are largely based on the cost of building works and are calculated in accordance with the Building Cost Guide. Additional fees are associated with the public notification and administration of the DA. Further fees may apply to developments in the impact track, depending on their complexity.

NOTIFICATION OF DEVELOPMENT APPLICATIONS

3.95 The DA application is considered to be lodged following the completeness check and payment of fees the application. Then public notification (either a minor or major notification) of the DA occurs.

3.96 For a minor notification, letters will be sent to the neighbours adjoining the property advising them of the application. For a major notification, letters will be sent to the adjoining neighbours and a sign placed on the site.

3.97 The time period for notification in stipulated in Part 3.2 of the Planning and Development Regulation 2008 and can range from 10 days to 20 days depending on the nature of the development.

3.98 Development applications are open for public comment via a representation/submission, and can be located on the website via the following link: https://www.planning.act.gov.au/talk-with-us/pubnote

https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/lodge-a-da. Accessed 10 February 2020.

[119]Accessible at https://www.legislation.act.gov.au/DownloadFile/es/db_60467/current/PDF/db_60467.PDF.

REPRESENTATIONS

3.99 A representation is a comment on, or objection to, a DA. A representation will only be considered if it is made during the public notification period.

3.100 Representations form part of the public register and are made available to the applicant, unless exemption has been granted.[120]

ENTITY REFERRALS

3.101 Liaison with referral entities may be required before lodging a development application depending on whether the application is in the code track, merit track or impact track.[121]

3.102 A referral entity may be a government department, statutory body or utility that provides advice to assist with assessing development applications.

3.103 Entity advice may be supplied with the development application at the time it is lodged, or plans or other information as required by the entity may be submitted with the development application for us to refer to the entity.[122]

3.104 If entity advice is provided in writing at the time the development application is lodged:

- it must have been given less than six months before the lodgement date; and
- the application does not need to be referred if the Authority is satisfied the applicant has adequately consulted with the entity.[123]

3.105 If a development application is referred to an entity by an Authority, that entity must give advice within 15 working days. If a referral entity does not provide advice within this time, the entity is taken to have given advice that supports the application.[124]

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[120] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

[121] Environment, Planning and Sustainable Development Directorate – Planning, 'Entity referral,' https://www.planning.act.gov.au/development_applications/da_assessment/entity_referral. Accessed 10 February 2020.

[122] Environment, Planning and Sustainable Development Directorate – Planning, 'Merit Track,' https://www.planning.act.gov.au/development-applications/da_assessment/da-assessment-tracks/merit_track, Accessed 10 February 2020.

[123] Environment, Planning and Sustainable Development Directorate – Planning, 'Merit Track,' https://www.planning.act.gov.au/development-applications/da_assessment/da-assessment-tracks/merit_track, Accessed 10 February 2020.

[124] Environment, Planning and Sustainable Development Directorate – Planning, 'Entity referral,' https://www.planning.act.gov.au/development_applications/da_assessment/entity_referral. Accessed 10 February 2020.

3.106 Where the Authority gives an approval that is consistent with the referral entity advice, that advice is binding – the referral entity must act consistently with their advice when issuing subsequent approvals and undertaking compliance or other actions.

3.107 The prescribed referral entities are contained in section 26 of the Planning and Development Regulation 2008 and are specified for each assessment track.

3.108 Impact Track prescribed referrals:

- Icon Water Limited;
- ActewAGL Distribution;
- the conservator of flora and fauna;
- the emergency services commissioner;
- the environment protection authority;
- the heritage council;
- the director-general of the administrative units responsible for the following matters:
  - health policy;
  - municipal services;
- if the application relates to unleased land or public land—the custodian of the land;
- if the planning and land authority, or the Minister, may impose an offset condition on the development approval for the application, and the offset condition would affect—
  - leased land—the lessee of the land; or
  - unleased land or public land—the custodian of the land.[125]

3.109 Merit Track prescribed referrals:

- if the application relates to any part of a declared site within the meaning of the *Tree Protection Act* 2005—the conservator of flora and fauna;
- if the application relates to unleased land or public land—the custodian of the land.[126]

3.110 In addition the following also apply:

- If the territory plan requires a development application to be referred to an entity, the entity is prescribed.[127]
- The City Renewal Authority is prescribed for a development application that relates to land in an urban renewal precinct.[128]

[125] Planning and Development Regulation 2008, Section 26 (1).
[126] Planning and Development Regulation 2008, Section 26 (2).
[127] Planning and Development Regulation 2008, Section 26 (3).
[128] Planning and Development Regulation 2008, Section 26 (4).

ASSESSMENT OF DEVELOPMENT APPLICATIONS

3.111 DAs are assessed under the *Planning and Development Act* 2007 and against:

- the relevant code of the Territory Plan;
- objectives of the zone the land is in;
- the suitability of land for the development;
- all representations made during notification;
- advice from entities including other government departments and utility services;
- a plan of management for any public land; and
- the likely impact of the development, including any environmental impact.[129]

3.112 Processing time for an application depends on:

- what track it is in; and
- any comments received during public notification of the DA.[130]

3.113 The statutory timeframes are:

- 20 working days from date of lodgement for code track applications; and
- 30 working days from date of lodgement for merit and impact tracks if no representations are received, and 45 working days from date of lodgement when representations are received.[131]

DECISIONS ABOUT DEVELOPMENT APPLICATIONS

3.114 Development applications can be:

- approved;
- approved subject to conditions; and
- refused.[132]

3.115 In some situations, the Minister may make a decision on a development application if:

- it raises a major policy issue;

[129] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

[130] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

[131] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

[132] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

- it seeks approval for a development that may have a substantial effect on the achievement or development of the object of the Territory Plan; or
- the approval or refusal of the development application would provide a substantial public benefit.[133]

3.116 The applicant will be notified via email with a link to download the notice of decision, together with any associated plans.

3.117 Plans that are approved are electronically stamped.

3.118 The applicant will need to comply with the conditions of development approval in the notice of decision and will need to consider any other approvals required for construction, including building approval.

3.119 Anyone who has made a representation during the public notification period is notified in writing of the decision as well as any rights of review of the decision.

3.120 An amendment to an approved development application will only be accepted if:

- the development applied for in the amendment will be substantially the same as the development applied for originally, and
- the assessment track for the application will not change if the application is amended.[134]

RECONSIDERATIONS

3.121 Section 7.3.10 of the *Planning and Development Act* 2007 sets out the terms for applications for reconsideration. It is possible to apply for reconsideration in the following circumstances:

- if a code track DA is approved subject to conditions;
- if a merit or impact track DA or amendment is decided on, including refusal.

3.122 A reconsideration application must be made within 20 working days after the day the applicant is informed about the original decisions by the planning and land authority. If the planning and land authority allow, the 20-working day period can be extended.[135]

3.123 It is not possible to apply for reconsideration if a code track development has been refused, or if an appeal has been lodged with the ACT Civil and Administrative Tribunal (ACAT).[136]

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[133] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

[134] ACT Government, 'Lodge a DA,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/lodge-a-da. Accessed 10 February 2020.

[135] *Planning and Development Act* 2007, section 205.

[136] ACT Government, 'Appeal a DA decision,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications/appeal-a-da-decision, Accessed 10 February 2020.

APPEALS TO ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

3.124 Section 7.3.10 of the *Planning and Development Act* 2007 sets out the terms of notice to the ACT Civil and Administrative Tribunal (ACAT). Appeals to ACAT must be lodged within 20 working days of the decision. It is possible to appeal to ACAT:

- if a code track DA is approved subject to conditions;
- if a merit or impact track DA has been approved subject to conditions, or refused;
- if the proposal is subject to a rule and does not comply with the rule, or has no rule applied.[137]

3.125 It is not possible to appeal if a code track development has been refused.

3.126 Schedule 1 of the *Planning and Development Act* 2007 sets out the decisions that are eligible for review, and then eligible entities who have appeal rights. The *ACT Civil and Administrative Tribunal Act* 2008 also provides relevant rules for ACT applications.[138]

3.127 There are also judicial review options available in the Supreme Court.

RETROSPECTIVE DEVELOPMENT APPLICATIONS

3.128 Development applications for developments undertaken without approval are described in section 205 of the *Planning and Development Act* 2007. This section of the Act applies if a development has been undertaken, and development approval was required for the development, and there was no development approval for the development.[139]

3.129 If the development becomes an exempt development, then the development is taken to have been an exempt development since the development was started.

3.130 The Act states that the lessee or sublessee of the land where the development was undertaken may apply for approval for the development under part 7.3 of the Act. In these circumstances, the Authority must treat any retrospective application for development approval as if the development had not already been undertaken.[140]

3.131 A work plan is required for all developments where there is existing development on the site that is unapproved and not exempt from development approval. The unapproved existing work plan must:

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[137] See *Planning and Development Act* 2007.
[138] *Planning and Development Act* 2007, Schedule 1; *ACT Civil and Administrative Tribunal Act* 2008.
[139] *Planning and Development Act* 2007, section 205.
[140] See *Planning and Development Act* 2007.

- be prepared by a registered surveyor;
- show the location and dimensions of the unapproved development, including height, width, and length dimensions and setbacks to block boundaries; and
- be signed by a registered surveyor.[141]

COMPLIANCE AND ENFORCEMENT

3.132 Access Canberra is the regulatory authority which investigates complaints and checks compliance with:

- the Building Act 2004
- the *Planning and Development Act* 2007
- Australian Standards
- the Building Code of Australia

3.133 Development and Crown Lease complaints are typically made by people that are negatively impacted by actions of owners and occupiers on adjoining blocks of land. Complaints usually relate to:

- failing to comply with a lease provision;
- undertaking unlawful development;
- undertaking development that doesn't comply with a development approval; or
- failing to keep a leasehold clean (only if more than 30 percent of the undeveloped portions of the block that are clearly visible from the public domain are covered in items. Long grass and overgrown foliage does not constitute an unclean leasehold and is not calculated as part of the 30 percent).[142]

3.134 Access Canberra carries out some enforcement functions under the *Planning and Development Act* 2007 on behalf of the ACT Planning and Land Authority. This includes managing complaints, carrying out investigations and issuing controlled activity orders.[143]

3.135 Complaints are initially assessed by Access Canberra's Complaints Management Team and may be referred to the Rapid Regulatory Response Team or the Building Investigations Team. The complainant is notified if their complaint has been referred to one of these teams for further

[141] Minimum Documentation Requirements for Lodgement of a Development Application (DA), https://www.planning.act.gov.au/__data/assets/pdf_file/0009/1096911/minimum-documentation-requirements-for-lodgement-of-a-development-application.pdf. Accessed 10 February 2020.

[142] ACT Government, 'Making a complaint,' https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints/making-a-complaint. Accessed 10 February 2020.

[143] Building and Construction Services: Compliance Framework, https://www.accesscanberra.act.gov.au/ci/fattach/get/160505/1501544417/redirect/1/filename/Building+and+construction+services+compliance+framework.pdf. Accessed 10 February 2020.

inquiry and is kept informed at significant milestones and at the finalisation of the complaint.[144]

3.136 As part of the complaints assessment process, Access Canberra's Rapid Regulatory Response Team aims to undertake a preliminary assessment of a complaint within five working days of receiving the complaint. This includes, where required, undertaking an inspection of the site that is the subject of the complaint. Within this period, Access Canberra inspectors aim to determine whether there is or is likely to be a breach that requires further investigation. This assessment will be communicated to the person making the complaint.[145]

3.137 In the event that there is an immediate risk to public safety, an assessment is undertaken within 24 hours of receiving a complaint.[146]

3.138 Not all matters progress to an investigation. Where matters do progress to an investigation, not all matters end with enforcement action being taken.[147]

3.139 The legislative framework includes a variety of options for dealing with non-compliance. Some decisions and actions can be made by officers in Access Canberra while others may only be made by the ACAT.[148]

3.140 Engage, educate and enforce are the three fundamental steps used by Access Canberra. Compliance is encouraged through education but escalating enforcement actions will be applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.[149]

- Engage means ensuring that there is a positive working relationship with stakeholders and members of the community.
- Educate means taking reasonable steps to ensure people know how to comply. We provide information to the industry and community to promote understanding and to encourage voluntary compliance.

[144] ACT Government, 'Making a complaint,' https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints/making-a-complaint. Accessed 10 February 2020.

[145] ACT Government, 'Making a complaint,', https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints/making-a-complaint. Accessed 10 February 2020.

[146] ACT Government, 'Making a complaint,' https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints/making-a-complaint. Accessed 10 February 2020.

[147] ACT Government, 'Making a complaint,', https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints/making-a-complaint. Accessed 10 February 2020.

[148]Building and Construction Services: Compliance Framework, https://www.accesscanberra.act.gov.au/ci/fattach/get/160505/1501544417/redirect/1/filename/Building+and+construction+services+compliance+framework.pdf. Accessed 10 February 2020.

[149]Building and Construction Services: Compliance Framework, https://www.accesscanberra.act.gov.au/ci/fattach/get/160505/1501544417/redirect/1/filename/Building+and+construction+services+compliance+framework.pdf. Accessed 10 February 2020.

- Enforce means taking action when non-compliance occurs proportional to the harm caused by the conduct (e.g. issue a warning, a rectification order, or an infringement notice).[150]

3.141 Under the *Planning and Development Act* 2007*,* enforcement action can be taken by an inspector appointed under the Act via the following means:

- Formal written warning – can be provided to leaseholders and other parties who are identified as being in breach of planning laws or a Crown lease.
- Orders – can be made against leaseholders and others to enforce the Act and Crown leases, and include:
  - Controlled activity orders — a direction to a person or entity to do one or more things set out in section 358(3) of the Act;
  - Prohibition orders — an order that prevents or stops a person or entity from undertaking prohibited development or development that is otherwise unlawful as set out in section 377 of the Act;
  - Rectification work direction — a direction to a person or entity to undertake rectification work to ensure compliance with a development approval or a controlled activity order.[151]

3.142 Other powers authorised by the Act are:

- Termination of lease for contravening orders or the Crown lease.
- Termination of licences to use land given by the Commonwealth or the Territory.
- A power for the Supreme Court to issue an injunction upon application from Construction Services.[152]

3.143 The Act provides a number of mechanisms for criminal enforcement for offences such as:

- developing without approval;
- undertaking prohibited development; and
- developing other than in accordance with conditions.[153]

3.144 Other mechanisms under the Act include controlled activities such as:

- failure to implement an offset management plan;

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[150]Building and Construction Services: Compliance Framework, https://www.accesscanberra.act.gov.au/ci/fattach/get/160505/1501544417/redirect/1/filename/Building+and+construction+services+compliance+framework.pdf. Accessed 10 February 2020.

[151]Building and Construction Services: Compliance Framework, https://www.accesscanberra.act.gov.au/ci/fattach/get/160505/1501544417/redirect/1/filename/Building+and+construction+services+compliance+framework.pdf. Accessed 10 February 2020.

[152]Building and Construction Services: Compliance Framework, https://www.accesscanberra.act.gov.au/ci/fattach/get/160505/1501544417/redirect/1/filename/Building+and+construction+services+compliance+framework.pdf. Accessed 10 February 2020.

[153] *Planning and Development Act* 2007, sections 199, 200, 202.

- undertaking developments that do not meet approval requirements;
- developing without approval;
- unapproved structures; and
- unauthorised use of unleased territory land.[154]

3.145 Contravening a controlled activity order is also a criminal offence. Penalties for criminal offences include prosecution and fines.

RESOURCES

3.146 The planning website (www.planning.act.gov.au) is an online resource to inform members of the public, applicants and objectors about the DA process, as well as all other planning processes. It includes suggestions for clients to determine design resources, design requirements, codes and standards, and access building files.

3.147 Resources include information on DAs and BAs, information about DA Performance, and links to development applications open for public consultation. The website also provides information about the DA Finder App, ACTMapi, eDev, how to resolve disputes and complaints and the reconsideration and appeals process.

ACTMAPI

3.148 ACTmapi is an interactive mapping service that enables users to analyse ACT spatial data, which are updated nightly.

3.149 The system supports maps including:

- aerial imagery map;
- aircraft noise map;
- asbestos response taskforce – indicative demolition schedule map;
- national capital authority map;
- a basic map;
- Canberra tracks map;
- development map;
- domestic animals map;
- education map;

[154] *Planning and Development Act* 2007, section 339 and schedule 2.

- heritage map; historic plans map;
- land custodian map;
- lease variation map;
- significant species, vegetation communities and registered trees map; soil and hydrogeological landscapes map;
- sport and recreation facilities;
- survey infrastructure map; territory plan map; and
- wind map.[155]

E-DEVELOPMENT

3.150 e-Development is a portal that enables applicants to lodge development applications online.[156] Through this tool, applicants can upload plans, documentation and any addition information or amendments. The tool also enables applicants to view the status of their application at any time. DAs have not been accepted over the counter, via post or email since January 2012.[157]

3.151 The following services are offered for applicants lodging DAs:

- lodge a new development application (DA);
- upload plans and documentation relating to the DA;
- lodge additional information if requested;
- lodge an amendment to an active DA;
- lodge documents to satisfy conditions of an approval;
- edit the existing DA form;
- view the status of the DA;
- if you are a company administrator, it is possible to manage the company's staff access to the DA; update personal details; and
- lodge building approvals and amendments to building approvals if you are a certifier.[158]

[155] ACTmapi, http://www.actmapi.act.gov.au/support.html, accessed 21 February 2020.

[156] Environment, Planning and Sustainable Development Directorate – Planning, 'eDevelopment,' https://www.planning.act.gov.au/tools-resources/e-services/edevelopment, accessed 21 February 2020.

[157] Environment, Planning and Sustainable Development Directorate – Planning, 'eDevelopment,' https://www.planning.act.gov.au/tools-resources/e-services/edevelopment, accessed 2 October 2019.

[158] Environment, Planning and Sustainable Development Directorate – Planning, 'eDevelopment,' https://www.planning.act.gov.au/tools-resources/e-services/edevelopment, accessed 21 February 2020.

DEVELOPMENT APPLICATION (DA) FINDER APP

3.152 The DA Finder App is a free smartphone application that provides information about Development Applications, Territory Plan Variations or Environment Impact Assessment applications lodged in the ACT. Users can search and receive notifications about development applications as well as comment online.[159]

WHO'S INVOLVED

DEVELOPMENT APPLICATION GATEWAY TEAM

3.153 The DA Gateway Team is the primary public interface for Planning and Development Assessment in the ACT. The team manages pre-application meetings, completeness checks for development applications, and exemption declaration applications.[160]

3.154 The DA Gateway Team can provide advice on planning rules in the ACT including zoning, planning codes that may apply to a development or a block of land, whether development approval may be required, and the DA process including documentation requirements. [161]

DEVELOPMENT APPLICATION LEASING TEAM

3.155 The Leasing Team is responsible for administering the DA side of leasing in the ACT.

3.156 This includes enquiries relating to varying a Crown lease, assessing and determining DAs for varying a Crown lease and for the leasing process after a DA has been approved, known as the post approval leasing process.[162]

3.157 The DA Leasing Team can provide advice on:

- Leasing enquiries and research for lessees on matters relating to the varying of a Crown lease;
- Pre-application meetings for DAs that include the variation of a Crown lease;

[159] Environment, Planning and Sustainable Development Directorate – Planning, 'DA Finder App' https://www.planning.act.gov.au/development_applications/da_finder_app, Accessed 10 February 2020.

[160] Environment, Planning and Sustainable Development Directorate – Planning, 'Contact us,' https://www.planning.act.gov.au/about-us/contact-us. Accessed 10 February 2020.

[161] ACT Government, *Submission No.42*, p. 6.

[162] Environment, Planning and Sustainable Development Directorate – Planning, 'Contact us,' https://www.planning.act.gov.au/about-us/contact-us. Accessed 10 February 2020.

- Lease variation only DAs, including reconsideration of DA decisions, and provide input into design and siting DAs; and
- The concessional status of a Crown lease and assess and determine DAs to remove the concessional status including preparation of Ministerial Briefings. [163]

LANDSCAPE REVIEW PANEL

3.158 The Landscape Review Panel was established to consider landscape related issues with development applications. This includes the removal of regulated trees.[164]

3.159 Members of the panel are senior officers within the merit assessment team, landscape architects within the Environment, Planning and Sustainable Development Directorate, the conservator liaison officer and officers from the Tree Protection Unit.[165]

NATIONAL CAPITAL DESIGN REVIEW PANEL

3.160 The National Capital Design Review Panel (NCDRP) is a joint initiative by the ACT Government and the National Capital Authority (NCA) to provide a single city-wide design review panel process before a development application is lodged. The NCDRP also offers an efficient and consistent approach to delivering independent and confidential design advice for development proposals across Canberra.[166]

3.161 The Panel is an independent, expert body, with panel members providing design advice to government, developers and designers for large-scale developments such as buildings, public spaces and public infrastructure.

3.162 The NCDRP provides advice under the supervision of the ACT Government Architect and the NCA's Chief Planner. Panel members are identified as experts in their field for their skills and record of achievement in one or more fields relevant to planning, design and development.[167]

3.163 Under the supervision of the ACT Government Architect and the NCA's Chief Planner, the NCDRP provides design advice to decision makers, developers and their design teams. Design

[163] ACT Government, *Submission No.42*, p. 7.

[164] *Answer to Question On Notice No 1,* answered 4 October 2018.

[165] *Answer to Question On Notice No 1,* answered 4 October 2018.

[166] Environment, Planning and Sustainable Development Directorate – Planning, 'National Capital Design Review Panel,' https://www.planning.act.gov.au/talk-with-us/boards-councils-committees-panels-and-other-bodies/national-capital-design-review-panel. Accessed 10 February 2020.

[167] Environment, Planning and Sustainable Development Directorate – Planning, 'National Capital Design Review Panel,' https://www.planning.act.gov.au/talk-with-us/boards-councils-committees-panels-and-other-bodies/national-capital-design-review-panel. Accessed 10 February 2020.

review sessions are nominally closed to the public, however consideration to share the Panel's Advice may be made on a case by case basis.[168]

3.164 An interim NCDRP was established in September 2017, in order to provide advice on time critical projects. As of September 2019, the Interim Panel had provided guidance on 26 proposals.[169]

3.165 In August 2019 the ACT Legislative Assembly amended the *Planning and Development Act* 2007 (effective 1 October 2019) to formally establish the NCDRP and as of 1 October 2019 the Panel has operated on a permanent basis.

3.166 A set of Design Principles for the ACT,[170] established in August 2019, have been developed to support assessment of projects by the NCDRP and to provide guidance for proponents when preparing for review. The Design Principles for the ACT have been benchmarked against best practice from design review panel documentation across Australia and New Zealand.[171]

3.167 Design review is held at the pre-development application stage and is encouraged as early as possible in the design process for an individual proposal.[172] The panel's advice to builders and developers is considered by the ACT Planning and Land Authority when it assesses development applications.

3.168 Aside from voluntary submissions for design review, from 1 October 2019, development identified as a prescribed development under the Planning and Development Regulation 2008 must consult with the NCDRP before lodging a development application. A prescribed development proposal is a building with five or more storeys. Prescribed development proposals are required to provide written response to the NCDRP's advice when submitting a development application.[173]

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[168] Environment, Planning and Sustainable Development Directorate – Planning, 'National Capital Design Review Panel,' https://www.planning.act.gov.au/talk-with-us/boards-councils-committees-panels-and-other-bodies/national-capital-design-review-panel. Accessed 10 February 2020.

[169] Environment, Planning and Sustainable Development Directorate – Planning, 'National Capital Design Review Panel,' https://www.planning.act.gov.au/talk-with-us/boards-councils-committees-panels-and-other-bodies/national-capital-design-review-panel. Accessed 10 February 2020.

[170] Design Principles for the ACT, https://www.planning.act.gov.au/__data/assets/pdf_file/0008/1404386/NCDRP-Design-Principles-for-the-ACT.pdf. Accessed 10 February 2020.

[171] Environment, Planning and Sustainable Development Directorate – Planning, 'National Capital Design Review Panel,' https://www.planning.act.gov.au/talk-with-us/boards-councils-committees-panels-and-other-bodies/national-capital-design-review-panel. Accessed 10 February 2020.

[172] Environment, Planning and Sustainable Development Directorate – Planning, 'National Capital Design Review Panel,' https://www.planning.act.gov.au/talk-with-us/boards-councils-committees-panels-and-other-bodies/national-capital-design-review-panel. Accessed 10 February 2020.

[173] Environment, Planning and Sustainable Development Directorate – Planning, 'National Capital Design Review Panel,' https://www.planning.act.gov.au/talk-with-us/boards-councils-committees-panels-and-other-bodies/national-capital-design-review-panel. Accessed 10 February 2020.

MAJOR PROJECTS REVIEW GROUP

3.169 The Major Projects Review Group (MPRG) provide an agency wide perspective on complex development proposals. [174]

3.170 The MPRG is independent from the application process. Its purpose is to consider the potential for a conflict of interest having an undue influence on decision making. [175]

3.171 The Environment and Planning Annual Report 2014-15 lists the MPRG as a formal decision-making and advisory committee for the Directorate. [176]

3.172 The MPRG consists of the Executive Director Planning Delivery, Managers Development Assessment, Manager Design Policy and may include the Technical Coordinator Leasing and other relevant section Managers/Technical Coordinators from within EPSDD.[177]

3.173 A development proposal to the MPRG should be referred internally:

- if the application is required to be referred to the Executive Policy Committee; if there is Ministerial interest in it; if the development proposal is an Estate Development Plan;
- if the development proposal is in the impact track;
- if the development proposal raises a major policy issue;
- if the proposal has received ten or more representations;
- if the proposal has been declared a major project by the Strategic Project Facilitation Group;
- if it proposed to grant an approval that would be inconsistent with any advice given for regulated trees and/or heritage;
- if it is proposed to grant an approval that would be inconsistent with any advice given by an entity to which the application was referred under division 7.3.3 of the *Planning and Development Act* 2007; or
- if the relevant section manager determines that the development proposal should be referred to the MPRG. [178]

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[174] *ACT Government Environment and Planning Annual Report 2014-15*, https://www.environment.act.gov.au/__data/assets/pdf_file/0019/782011/EPD-2014-15-Annual-Reports-FINAL-accessible-221015.pdf, accessed 9 October 2019.

[175] *ACT Government Environment and Planning Annual Report 2014-15*, https://www.environment.act.gov.au/__data/assets/pdf_file/0019/782011/EPD-2014-15-Annual-Reports-FINAL-accessible-221015.pdf, accessed 9 October 2019.

[176] *ACT Government Environment and Planning Annual Report 2014-15*, p. 12, https://www.environment.act.gov.au/__data/assets/pdf_file/0019/782011/EPD-2014-15-Annual-Reports-FINAL-accessible-221015.pdf, accessed 9 October 2019.

[177] *ACT Government Environment and Planning Annual Report 2014-15*, https://www.environment.act.gov.au/__data/assets/pdf_file/0019/782011/EPD-2014-15-Annual-Reports-FINAL-accessible-221015.pdf, accessed 9 October 2019.

[178] *ACT Government Environment and Planning Annual Report 2014-15*, https://www.environment.act.gov.au/__data/assets/pdf_file/0019/782011/EPD-2014-15-Annual-Reports-FINAL-accessible-221015.pdf, accessed 9 October 2019.

ACT HERITAGE COUNCIL

3.174 The ACT Heritage Council advises on proposed developments when a place or object has heritage status, subject to provisions of the Heritage Act 2004 requiring approval for works to proceed. Development applications for heritage places and objects are referred to the Heritage Council for advice on the effect of a development on the heritage significance, and ways to avoid or minimise impact on heritage significance. [179]

3.175 The Heritage Council is an independent, statutory body responsible for a range of provisions under the *Heritage Act* 2004 including:

- identifying, assessing, conserving and promoting heritage places and objects in the ACT;
- making decisions about the registration of heritage places and objects;
- providing advice on works and development matters in accordance with the ACT's land planning and development system;
- encouraging and assisting with appropriate management of heritage places and objects; and
- encouraging public interest in, and awareness of, heritage places and objects in the ACT.[180]

TRANSPORT CANBERRA AND CITY SERVICES

3.176 Transport Canberra and City Services (TCCS) is an entity that development applications are often required to be referred to.

3.177 TCCS is required to be involved in the planning for development and projects across the Territory that will deliver TCCS assets or impact on TCCS infrastructure. The TCCS business unit, Development Coordination (DC), provides advice, guidance and direction on all assets associated with Roads ACT, City Presentation and ACT NOWaste.[181]

3.178 TCCS is also responsible for the management of over 760,000 trees on Canberra's urban public land, and the protection of many trees on leased land. It manages the ACT Tree Register and the application process to undertake a Tree Damaging Activity.[182]

3.179 The TCCS also facilitates approvals for:

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[179] ACT Government, 'Heritage,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/heritage, accessed 4 October 2019.

[180] Environment, Planning and Sustainable Development Directorate – Planning, 'CT Heritage Council,' https://www.planning.act.gov.au/about-us/annual-reports/2012-13_annual_report/annexed_reports/act_heritage_council, Accessed 10 February 2020.

[181] City Services, 'Plan and Build,' https://www.cityservices.act.gov.au/plan-and-build. Accessed 10 February 2020.

[182] Accessible at https://www.cityservices.act.gov.au/trees-and-nature/trees/trees-on-leased-land/tree_activity_application_forms.

- driveway modifications and construction;
- construction impacting stormwater easements;
- demolition and excavation waste; and
- construction impacting the verge or public open space.[183]

3.180 Asset Acceptance (AA) is a referral agency in the ACT's planning system. EPSDD refers DAs that impact on TCCS assets and infrastructure to the AA for comment.[184]

3.181 AA coordinates the response on behalf of TCCS' agencies, including Roads ACT, ACT NOWaste, ACTION and City Presentation. AA is the single point of contact for TCCS and their comments represent TCCS' position on the specific DA.[185]

3.182 Decisions made by the AA on a specific DA are then forwarded to EPSDD, endorsed with one of the following responses:

- Supported;
- supported with conditions; or
- not supported.[186]

CONSERVATOR OF FLORA AND FAUNA

3.183 The Conservator of Flora and Fauna has statutory obligations under the Act to comment on, among other things, Territory Plan variations, environmental impact statements and development applications.[187]

3.184 The Conservator is responsible for making decisions on applications to undertake defined tree-damaging activities on trees on leased urban land that meet the criteria for protection in the *Tree Protection Act* 2005.[188]

ENVIRONMENT PLANNING AND SUSTAINABLE DEVELOPMENT

[183] City Services, 'Plan and Build,' https://www.cityservices.act.gov.au/plan-and-build. Accessed 10 February 2020.Accessed 10 February 2020.

[184] City Services, 'Development Application advice,' https://www.cityservices.act.gov.au/plan-and-build/pre-development-applications/development-application-advice. Accessed 10 February 2020.

[185] City Services, 'Development Application advice,' https://www.cityservices.act.gov.au/plan-and-build/pre-development-applications/development-application-advice. Accessed 10 February 2020.

[186] City Services, 'Development Application advice,' https://www.cityservices.act.gov.au/plan-and-build/pre-development-applications/development-application-advice. Accessed 10 February 2020.

[187] Environment, Planning and Sustainable Development Directorate – Planning,' Conservator of Flora and Fauna,' 'https://www.planning.act.gov.au/about-us/annual-reports/2013-14-annual-report/annexed-reports/conservator-of-flora-and-fauna. Accessed 10 February 2020.

[188] Environment, Planning and Sustainable Development Directorate – Planning, 'Conservator of Flora and Fauna,' https://www.planning.act.gov.au/about-us/annual-reports/2013-14-annual-report/annexed-reports/conservator-of-flora-and-fauna. Accessed 10 February 2020.

DIRECTORATE

3.185 The Environment, Planning and Sustainable Development Directorate (EPSDD) has administrative responsibility for the control of development on Territory land. It has many functions, with its core function being planning for Canberra's future growth in partnership with the community.[189]

3.186 The Planning and Land Authority within the EPSDD is responsible for preparing and administering the Territory Plan, planning and regulating the development of land, administering leases and licenses over unleased Territory land, advising on spatial planning and deciding on the approval of applications to undertake development.[190]

OTHER

3.187 Other government agencies and utility services that can be involved in the DA process include:

- Icon Water;
- ActewAGL;
- Evoenergy;
- The ESA Commissioner;
- The ACT Government Architect; and
- The Health Directorate.

[189] Environment, Planning and Sustainable Development Directorate – Planning, 'Territory Plan and the National Capital Plan,' https://www.planning.act.gov.au/planning-our-city/territory_plan/territory-plan-and-the-national-capital-plan. Accessed 10 February 2020.

[190] Building and Construction Services: Compliance Framework, https://www.accesscanberra.act.gov.au/ci/fattach/get/160505/1501544417/redirect/1/filename/Building+and+construction+services+compliance+framework.pdf. Accessed 10 February 2020.

4 STAKEHOLDER PERCEPTIONS AND CONSULTATION

PERCEPTIONS OF THE DEVELOPMENT APPLICATION PROCESS

4.1 Many submitters and witnesses told the Committee that their views of the overarching DA process were not positive.[191] Some proffered views and suggestions for components of the DA process, whilst others commented on the process as a whole.

4.2 Mr Moore, on behalf of the Kingston and Barton Residents Group (KBRG), told the Committee that:

> As far as the community is concerned, there is very little trust in the DA process at present. We believe it has very much been gamed to the disadvantage of the community and even the traders.[192]

4.3 He also noted:

> …that a number of other community submissions have also recorded widespread lack of trust and confidence in the present administration's decisions under the government planning system.[193]

4.4 Mr Mitchell, in particular, described the ACT planning and compliance systems as 'an absolute fog.'[194]

4.5 Industry groups also had views on the DA process with the Master Builders Association (MBA) telling the Committee that:

> It is clear from our reading of a number of the submissions that have been made that there is currently a low level of satisfaction with the DA process amongst a number of stakeholders. I would certainly include industry as being equally as frustrated with the process at the moment.[195]

4.6 The Property Council and the Canberra Business Chamber (CBC) noted the consequences of low satisfaction and uncertainty:

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[191] See for example, Better Renting, *Submission 9*; Friends of Hawker Village, *Submission 11*; Kingston and Barton Residents Group, *Submission 39*; Campbell Community Association, *Submission 18*; Environmental Defender's Office, *Submission 58*; Master Builders Association of the ACT, *Submission 48.*

[192] Mr Moore, *Transcript of Evidence*, 10 September 2018, p. 13.

[193] Mr Moore, *Transcript of Evidence*, 10 September 2018, p. 4.

[194] Mr Mitchell, *Transcript of Evidence*, 13 September 2018, p. 133.

[195] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 33.

> The DA process has a significant impact on property and investment decision making. Delays and uncertainty in planning approval create an economic cost to the community. This has effect on building quality and design. There is a need for greater certainty when making investment decisions particularly on what can be done and, what needs to be done.[196]
>
> Industry and the community desire consistency in advice and decision making by the planning authority.[197]

4.7 The MBA echoed these sentiments adding the observation that 'if you think about all that cumulatively, it has a significant impact on the attractiveness of Canberra as a place to invest.'[198]

4.8 The Property Council told the Committee that they had 'released a report card on the planning systems across the country' and that despite the negative perceptions 'Canberra came in second behind Queensland in terms of its efficiency.'[199]

4.9 They went on to tell the Committee that the ACT jurisdiction was:

> …sometimes seen as a very complex jurisdiction to work in because of our leasehold system but, in actual fact, having only one level of approval—and of course the NCA overlaying that—can create great efficiencies and has the potential to create streamlining in the approvals processes once there is greater education.[200]

4.10 It was also explained that:

> A lot of the assessment is done off the development assessment framework, DAF. That provides a number of guidelines and principles for our development code and development assessment processes. The ACT rates quite highly because it has the mechanisms in place to allow for code track assessments and merit track assessments rather than through what often happens, at a local council level, local government level, and then state government level, which can add to that complexity.[201]

4.11 It was not apparent to the Committee that the Directorate had undertaken any of its own benchmarking work to measure how the ACT DA Process compares in terms of approval times, appeal rates etc. However the Directorate stated in an Answer to a Question on Notice that:

> Given that the ACT is the only jurisdiction with the DAF model, comparisons with other jurisdictions have limited value. The Environment, Planning and Sustainable

[196] Property Council of Australia, *Submission 49*, p. 2.
[197] Property Council of Australia, *Submission 49*, p. 2; Canberra Business Chamber, *Submission 45,* p. 2.
[198] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 33.
[199] Ms Cirson, *Transcript of Evidence*, 10 September 2018, p. 25.
[200] Ms Cirson, *Transcript of Evidence*, 10 September 2018, p. 25.
[201] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 25.

> Development Directorate (EPSDD) has four budget accountability indicators for development assessment as follows; development application processing times, the percentage of development application decisions made within statutory deadlines, the percent of development application appeals resolved by mediation in relation to development proposals and the percentage of ACT Civil and Administrative Tribunal decisions which uphold the Directorate's original decision. Performance against the accountability indicators is reported on in Output 1.1 of the EPSDD Annual Report.[202]

4.12 In this context the Australian Housing and Urban Research Institute (AHURI) indicated that their:

> …research has shown that as part of reform, many Australian jurisdictions have introduced a range of changes to development application requirements, from removing referral requirements, to introducing plan templates, to help reduce the burden of information requirements, standardise these requirements and streamline decision-making.[203]

4.13 Despite the good report card from the Property Council the Planning Institute Australia (PIA) expressed concerns that whilst the ACT used to lead the way it has relegated its position:

> … planning in the ACT was 'cutting edge' across Australia and other jurisdiction previously looked to the ACT to seek new ways of solving urban planning issues. It now seems that the ACT simply looks to other jurisdictions and follow the lead provided by other states. PIA ACT feel that increased funding of planning research, increased resources for the Strategic Planning and Territory Plan teams within EPSDD together with additional support for non-Government research, such as CURF and local Universities would result in positive long term outcomes for Canberra.[204]

4.14 The MBA noted that other jurisdictions:

> …have recognised the link between the DA process and economic investment. Some have responded by creating special planning zones, modified third-party appeal rights, reduced infrastructure charges or development fees, a whole range of things to encourage economic activity.[205]

4.15 They imparted to the Committee that 'if the ACT were to ignore these factors, our economic competitiveness would be reduced.'[206]

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[202] *Answer to Question on Notice No 5*, answered 2 October 2018.
[203] Australian Housing and Urban Research Institute, *Submission 38*, p. 5.
[204] Planning Institute of Australia, *Submission 29*, p. 10.
[205] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, pp. 33-34.
[206] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, pp. 33-34.

PRE-APPLICATION ADVICE

4.16 It was noted by the Committee that often developers would seek out advice from the EPSDD and other entities and agencies prior to lodging a DA. When asked by the Committee about the pre-DA advice given to applicants the Directorate indicated that:

> If you require pre-application advice you can make an appointment with our gateway team. There will then be a meeting set up for the proponent to come and deliver his concept proposal both to a representative of the gateway team but more so to the involved entities including TCSS, Icon Water, those sorts of people that will attend. After your pre-application meeting we will provide a record of advice to the person who asked for the meeting. That will be purely advice at that stage and it will be around concepts. We will expect the person then to go back, have regard to those notes and maybe make some adjustments all before he lodges or considers certain things.[207]

4.17 The workshops held by the PIA articulated concerns that despite the potential for effective outcomes pre-application meetings are often perceived as an administrative burden rather than an opportunity to gain 'definitive advice as to whether the departures etc from standard requirements may be acceptable.'[208]

> The administrative processes required and time delays to secure a pre-Development Application meeting with ACT Agencies is not worth the outcome when regular applicants already know the general DA processes and requirements. This results in most DAs being lodged 'cold' with little or no interaction with ACTPLA assessing officers during this critical pre-lodgement period.[209]

4.18 The Committee was told that the absence of senior officials and the unreliable attendance at these meetings by stakeholder agencies impacted negatively on the process, as did a lack of clarity about the requirements contained in advice from these bodies.[210]

4.19 It was also noted that 'the level of resolution required in order to facilitate these meetings' was causing issues. The Property Council indicated that 'it is expected that designs are resolved to a stage that is appropriate for DA lodgement, and therefore design development has already occurred, mostly devoid of Government agency involvement and feedback.'[211]

4.20 The AIA indicated that in their experience pre-DA assistance had been helpful in the past but that a number of issues were starting to cause issues for applicants:

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[207] Mr Cilliers, *Transcript of Evidence*, 13 September 2018, pp. 149-150.
[208] Planning Institute of Australia, *Submission 29*, p. 4.
[209] Planning Institute of Australia, *Submission 29*, p. 11.
[210] Planning Institute of Australia, *Submission 29*, p. 4.
[211] Property Council of Australia, *Submission 49*, p. 4.

> …as it is common for government officers involved in this consultation to have no further contribution in the assessment process once the DA has been lodged. This is of particular concern where the assessment is referred to entities such as IQON water and ActewAGL as there is a need for consistency of information flow. In addition, the pre-application consultation outcomes aren't always appropriately communicated to the team that undertakes the completeness check, especially when out-of-the-box solutions have been found for a development/design reason. This lack of coordination can lead to DA knockbacks which costs money and wastes a significant amount of time for all participants.[212]

4.21 The Property Council suggested that in order to provide the desired outcomes, more than the current singular pre-application meeting is required. Other suggestions included:

- The ability for applicants to meet before design is available;
- Clear parameters for what the meeting series is to achieve;
- The expected level of engagement from all parties;
- The approach and mindset expected from attending officers;
- Agreement of an appropriate number of meetings that will allow collaborative design resolution; and
- Understanding on the level of design required at each of the meetings.[213]

4.22 The Property Council advocated that this approach would 'be of significant benefit where the proponent can present the objectives and key elements of the project and seek valuable feedback that ultimately should decrease the need and timeframes for inter-agency circulation during the statutory process.' However, they also acknowledged there was a need to consider how such a process would work alongside the Design Review Panel and the role of the ACT Government Architect.[214]

4.23 It was noted that the pre-application process appeared to be directed at industry and large developers and that other applicants were excluded from this process. The AIA advocated that all applicants should have access to pre-application meetings:

> In terms of pre-application meetings, we would like the applicants, including mums and dads, to have the ability to meet with assessing officers at the early design stage to ask questions before plans are lodged. This would require a change in approach from the attending officers, authorities and customer services team.[215]

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[212] Australian Institute of Architects, *Submission 37,* p. 2.
[213] Property Council of Australia, *Submission 49*, pp. 4-5.
[214] Property Council of Australia, *Submission 49*, p. 5.
[215] Mr Leeson, *Transcript of Evidence*, 10 September 2018, p. 43.

NATIONAL CAPITAL DESIGN REVIEW PANEL

4.24 The Committee noted that from 1 October 2019, development identified as a prescribed development under the Planning and Development Regulation 2008 must consult with the National Capital Design Review Panel (NCDRP).[216]

4.25 The Directorate, in an Answer to a Question on Notice, explained how the NCDRP has been integrated into the DA Process:

> The National Capital Design Review Panel is an independent advisory panel established to review the design quality of development proposals. The panel is co-chaired by the ACT Government Architect and the National Capital Authority's Chief Planner and includes a range of respected planning and design experts. The process is an efficient and cost effective way to improve the design quality of development proposals, including buildings, infrastructure and the public domain.
>
> Proposals are presented at a concept stage, with the panel providing formal written advice to proponents and Government. This advice can inform key changes required to be made to proposals prior to lodgement as a development application, and also provides the identification of positive design outcomes. While the design review panel is currently not a mandatory referral agency, its advice is given strong regard during the assessment of development proposals.[217]

4.26 In the same Answer to a Question on Notice the Directorate told the Committee that the types of DAs that would be reviewed by the NCDRP included:

> development proposals that are more than four storeys within town centres and group centres; within the City Renewal Authority's city renewal precinct; or fronting Main Avenues and Approach Routes (as identified under the National Capital Plan). It is also available for public infrastructure projects across the city, including estate development plans in greenfields areas. [218]

4.27 The KBRG suggested that the NCDRP 'become a mandatory part of the process for larger, more complex or potentially contentious proposals' and 'that the advice of the Design Review Panel is formalised and attached to the DA, along with a statement by the applicant as to how the design has responded to the panel's advice.'[219]

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[216] Snapshot, https://www.planning.act.gov.au/__data/assets/pdf_file/0006/1409604/NCDRP-Snapshot-03.09.19.pdf, accessed 23 October 2019.

[217] *Answer to Question on Notice No 4*, answered 2 October 2018.

[218] *Answer to Question on Notice No 4*, answered 2 October 2018.

[219] Kingston and Barton Residents Group, *Submission 39*, pp. 5-6.

4.28 They also suggested that 'ideally such panels should commence at the pre-DA stage, when it is more likely that a design can be readily modified, and provide an opportunity for neighbours or community representatives to be heard and see how the panel deals with design issues.'[220]

4.29 The PIA 'Government workshop' acknowledged the effectiveness of the NCDRP and how it 'provides the EPSDD/ACTPLA Assessing Officer more confidence in considering the merits of a proposal,' however they did note that 'not all key Agencies are part of the Panel (e.g. CRA), not all Government projects are referred to the Panel,' and 'Panel meetings need to be more frequent.'[221]

4.30 The Canberra Business Chamber was also very supportive of the NCDRP, indicating in their submission that it will 'reduce planning approval timeframes, encourage innovation, be outcome focussed, and build trust within the community about the DA processes.[222]

4.31 The Directorate also suggested, in an Answer to a Question on Notice, that 'the design review panel will have a positive impact on costs and approval times for proponents.'

> Where proponents have acted on the panel' s advice, the assessment process will generally be shorter as important issues will have already been addressed. The design review panel process will lead to a better designed built environment for the Canberra community and a more attractive and cost-effective outcome for proponents. [223]

Recommendation 1

4.32 The Committee recommends that within the next 12 months the Directorate review the pre-application advice process and operation of the National Capital Design Review Panel to ensure both processes are working together effectively.

PRE-DA CONSULTATION FOR COMMUNITY

EARLY CONSULTATION

4.33 The Committee received numerous submissions asserting that early consultation with the community was essential.[224]

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[220] Kingston and Barton Residents Group, *Submission 39*, p. 5.

[221] Planning Institute of Australia, *Submission 29*, p. 4.

[222] Canberra Business Chamber, *Submission 45*, p. 2.

[223] *Answer to Question on Notice No 4*, answered 2 October 2018.

[224] See for example, Planning Institute of Australia, *Submission 29*, p. 3; Kingston and Barton Residents Group, *Submission 39;* Property Council of Australia*, Submission 49;* Environmental Defenders' Office*, Submission 58.*

4.34 It was noted by community submitters that when developers advise neighbouring residents and offer opportunities for concerned residents to consult with them, it proves beneficial to both the developer and neighbouring residents.[225]

4.35 The PIA in a 'Government workshop'[226] also agreed that, particularly for contentious development proposals, 'pre-DA consultation has proven beneficial to the DA assessment process.''[227]

4.36 AHURI supported this perspective indicating that their research showed that:

> …while increased consultation and notification about projects is likely to increase the level of opposition to projects, and streamlining planning assessment processes reduces such opposition, such opposition can serve to 'steward more sustainable and appropriate development outcomes'. Some studies suggest that community involvement should be encouraged throughout the decision-making process, even at the policy development phase.[228]

4.37 There also appeared to be near consensus that consultation facilitated clarity and could 'potentially avert a future representation to the Planning Authority or a subsequent ACAT hearing.'[229]

4.38 Furthermore the Directorate advocated that:

> If you get your engagement right…you can get faster approval and…may not end up in the tribunal. [230]

4.39 In noting the process in Queensland, where the government recommends pre-lodgement consultation, the MBA submitted that:

> …if consultation is completed well at the front end of planning process, major planning elements such as land uses, building heights, design controls, and the like will be confirmed (albeit maybe not agreed by all stakeholders). This should allow individual DA's which comply with the earlier level planning to be have less rigorous consultation and faster assessment timeframes. It would follow that DA's which comply with earlier level planning rules should not be subject to third party appeals. Conversely, proposals which do not comply with the earlier level planning should undergo more comprehensive assessment, including greater consultation requirements.[231]

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[225] Kelly and Appleton, *Submission 60,* p, 2.

[226] PIA Members who work within ACT Government either directly in DA Assessment, or work in areas associated with DAs; Planning Institute of Australia, *Submission 29*, p. 2.

[227] Planning Institute of Australia, *Submission 29*, p. 3.

[228] Australian Housing and Urban Research Institute, *Submission 38*, p. 2.

[229] Kelly and Appleton, *Submission 60,* p, 2.

[230] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p.152.

[231] Master Builders Association of the ACT, *Submission 48*, p. 2.

> When I talk about early consultation, I am really talking about government-led consultation before the DA is lodged: at the Territory Plan, master plan, precinct code type stage. I think that that consultation role is one for government, not for developers.[232]

4.40 Mr Hopkins, on behalf of the MBA, told the Committee that:

> I would certainly support measures or recommendations from this committee which go towards encouraging that greater and earlier consultation in return for some relief in the legal process at the end of the DA process.[233]

4.41 Similarly Dr Klovdahl also noted that early consultation would:

> …help developers gauge community sentiment, may yield ideas that increase the economic returns of a proposed development, and can save lengthy delays … perhaps occasionally suggesting continued pursuit of a particular project is not cost-effective and developer resources are better spent on other projects.[234]

4.42 A number of submitters also suggested that certain developments should receive greater consideration in terms of the level of consultation offered to the community.[235]

4.43 The 'Government workshop' held by the PIA 'considered that the pre-DA consultation for proposals subject to Environmental Impact Assessment should be more structured to ensure information provided allowed the community to be properly informed.'[236]

4.44 Dr Klovdahl suggested that all significant DAs, including 'DAs affecting a local shopping Centre, a Group Centre, a Town Centre, and so on' and 'DAs that adversely affect single residences (for example, safety or amenity), and may set precedents for other single residences,' should require appropriately higher levels of notification and consultation.[237]

CHARACTERISTICS OF PRE-DA CONSULTATION

4.45 When it comes to consultation with the community about proposed developments there was great amount of inconsistency displayed by developers. On the more negative side of the equation the Committee was informed that:

> Project proponents will often assert that pre-DA community consultation has occurred. Our experience is that community consultation for larger projects takes the form of a

[232] Master Builders Association of the ACT, *Submission 48*, p. 2.

[233] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 40.

[234] Dr Klovdahl, *Submission 61*, p. 2.

[235] See for example, Planning Institute of Australia, *Submission 29*; Kingston and Barton Residents Group, *Submission 39*; Dr Klovdahl, *Submission 61*.

[236] Planning Institute of Australia, *Submission 29*, p. 3.

[237] Dr Klovdahl, *Submission 61*, p. 1.

> presentation, more akin to a marketing exercise, after the design decisions have been made. For smaller developments, pre-DA consultations with neighbours may not occur, and we believe they should be mandatory.[238]

4.46 Dr Fogerty, on behalf of the Hughes Residents Association, echoed this concern and told the Committee that:

> There needs to be consultation, and it needs not to be show and tell. It needs not to be a bunch of slide printouts on a wall and you are all herded past them, so that you cannot talk to each other or make any comments, and you have no opportunity to tell the government what you think.[239]

4.47 The Woden Valley Community Council noted that even simple things like providing opportunity for questions or facilitating a seated forum were not occurring in some instances.[240] In giving the example of the WOVA development consultation they also made note of developers coming to a public meeting after submissions had closed; restricted time for discussion and not being advised of amendments.[241]

4.48 Combined Community Councils of the ACT indicated that 'the opaqueness of pre-DA discussions can leave the public feeling as though any community consultation process is tokenistic and will not impact on the DA decision.'[242]

4.49 The Environmental Defenders' Office (EDO) noted that it did not help that 'the public have the perception that pre-DA consults between the planning and land authority and the applicant impact on decisions prematurely, as though the decision has already been made.'[243]

4.50 Friends of Hawker Village submitted that their 'experience with pre-DA consultation has been varied.' Using the Republic project in Belconnen and the Hawker Tennis Centre pre-DA processes as examples they indicated in their submission that:

> …the overall impression was one of an attempt to sell the outcome preferred by the developer rather than any genuine interest in community feedback, other than to detect from where opposition might come. The cynics amongst us tend to believe that developers see the Pre-DA consultation as an opportunity to soften up the community for a dramatic change to their neighbourhood rather than an opportunity for them to redesign their proposal to accommodate community views.[244]

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[238] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.
[239] Dr Fogerty, *Transcript of Evidence*, 10 September 2018, p. 18.
[240] Woden Valley Community Council, *Submission 54*, p. 4.
[241] *Transcript of Evidence*, 13 September 2018, pp. 104-106.
[242] Environmental Defenders' Office, *Submission 58*, p. 9.
[243] Environmental Defenders' Office, *Submission 58*, p. 9.
[244] Friends of Hawker Village, *Submission 11*, p. 2.

4.51 Carol Russell suggested that 'community consultation is not generally considered to be genuine. Developers merely go through the process to tick the box for its requirement.'[245] This was strongly supported by the Red Hill Regenerators who identified that when they:

> have obtained assessment documents via Freedom of Information, a "cut and pasting" of the consultants summary in briefing and other key decision documents is observed. It seems that community comments have only received lip service, and that community engagement appears to be more about ticking a box rather than a genuine attempt to understand and take into account community views. It does not help that the same consultants tend to be the representatives from one development proposal to the next. It is hard not to feel cynical when a new round of engagement is being led by the same consultants with whom the group has a history of unsatisfactory and often evasive and untruthful dealings.[246]

4.52 They went on to suggest that:

> Community engagement should not be filtered through the developer. If conflict and community anger and frustration is to be reduced then direct community engagement with the Directorate should be more than just the ability to lodge an objection. The Directorate has environmental, heritage and tree protection specialists engaged in and contributing to the development process and assessment outcome. Why are not specialists in canvasing community engagement and assessing community views not also employed in the process?[247]

4.53 A number of community organisations therefore felt that the ACT Government should attend and participate in public consultation sessions or run the sessions instead of the developer:[248]

> On the issue of consultation, we believe that consultation sessions should be run by the government, not by developers, for any development which requires a Territory Plan variation, major lease variation or other major impact or relates to a site for which there is known community interest. Show-and-tell sessions run by developers, with only the developer providing feedback to government, do not constitute consultation.[249]

4.54 Red Hill Regenerators made mention of the recent Community Panel process that was implemented by the ACT Government for the Red Hill woodland area. It noted that the three panel meetings were attended by members of the community, the planning authority and

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[245] Carol Russell, *Submission 32*, p, 4.

[246] Red Hill Regenerators, *Submission 10,* p. 3.

[247] Red Hill Regenerators, *Submission 10,* p. 3.

[248] See for example, Carol Russell, *Submission 32*, p. 4.Hughes Residents Association, *Submission 40*; Red Hill Regenerators, *Submission 10*.

[249] Dr Fogerty, *Transcript of Evidence*, 10 September 2018, p. 7.

developers. However instead of being a 'forum for working things out together' the Red Hill Regenerators felt that the process became a simple 'presentation of information.' They noted:

> that the panel process had merit, but it is important that all parties reach agreement and enter into a shared terms of reference of what the panel will address. These terms of reference should be agreed upon as the first part of the panel process. The planning authority also needs to commit up-front to implementing outcomes, or at least those outcomes that fall within the remit or terms of reference of the panel process.[250]

4.55 When asked by the Committee about genuine community engagement, in comparison to the optics of genuine engagement, the Directorate responded with:

> My preference would be at that early stage that they would start to talk about the mix. They might say, "We want X percentage of three bedroom, two bedroom and one bedroom," and start to develop the ideas. But they would clearly have an idea about what they are wanting to get out of the site, and they need to be up-front about that. [251]

4.56 Whilst the majority of submissions focused on where pre-DA consultations need to improve, there were a number of developers and developments that were praised for their efforts to consult, albeit they were noted as the exception not the rule.

4.57 Capital Estate and Village Building Co were noted by the Weston Creek Community Council, as standouts in their efforts to engage and consult[252] whilst Gungahlin Community Council noted the best-practice pre-DA consultation approach taken by the Kamberra development.[253]

4.58 The Molonglo Group and their approach to consultation in regards to their development on Dairy Road was also referred to for their efforts to involve the community early:

> They have had a whole month of events. They have invited people to go. They invited the Inner South Canberra Community Council to do a walk around. It builds more trust if people are getting involved at an early stage. It is like, "Okay. We haven't got anything locked up yet. We are just seeking your views at this early stage." I think there is a lot more goodwill when it is done that way.[254]

4.59 Dr Denham, on behalf of the Griffith Narrabundah Community Association, expressed praise to the Committee about 'the consultation on the redevelopment of the Stuart Flats and Gowrie Court.'[255] He noted that it was a good process because:

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[250] Red Hill Regenerators, *Submission 10,* p. 4.
[251] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 152.
[252] Weston Creek Community Council, *Submission 46*, pp. 1-2.
[253] Gungahlin Community Council, *Submission 22*, p. 2
[254] Ms Fasteas, *Transcript of Evidence*, 13 September 2018, p. 113.
[255] Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 17.

> They came to us. We had meetings; we sat down and were asked, "What do you want here?" There was a full, open discussion. For example, at Gowrie Court, the original plan was to have six storeys all the way around. We thought, "That's not really very good because it's miles away from local shops. Wouldn't it be better to have townhouses and things there?" Most of it now is townhouses, and there are just two of the six-storey things. Things were changed. You felt that you were part of the process because the outcomes were changing as a result of the community consultation.[256]

4.60 The Red Hill development also attracted some positive feedback from most witnesses, largely due to the community consultation which:

> …was very wide ranging and very extensive. It pulled in people of all age groups, including the public housing tenants, who, of course, were all going to have to be rehoused. To date it appears to have been very successful. The Red Hill association was formed in response to that, and they are still active. They kept their community well and truly involved. But there was an enormous commitment on the part of a whole lot of people, as well as the particular unit that took over the final consultation process.[257]

POLICY VERSUS PROJECT

4.61 Whilst it was acknowledged that 'there will always be debates over what form of development constitutes a good outcome,'[258] industry bodies expressed concerns that consultation opportunities during DA processes were becoming debates about policy and not focused on the actual project which was the subject of the DA.

4.62 The Property Council noted that 'at times the debate about a particular project is somewhat de-railed by debate around policy decisions rather than the project itself.'[259] They told the Committee that:

> ….there is a disconnect between what is allowed under the current planning framework and what is expected of our members to go out and advocate for or to educate on, when that is actually the role of the government. Our members' job is to go and talk to people about the type of development, not necessarily whether 26 storeys is allowed in a particular site.[260]
>
> It is actually a shared responsibility between the government and the proponents undertaking the referral to understand where those policy debates need to be happening. And, as Adina said, a lot of it is permissible use. So often there is the provision for double-storey or townhouse developments that can often meet most

[256] Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 18.
[257] Ms Forrest, *Transcript of Evidence*, 13 September 2018, p. 114.
[258] Planning Institute of Australia, *Submission 29*, p. 1.
[259] Property Council of Australia, *Submission 49*, p. 3.
[260] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 29.

> rules but may require some criteria. Yet there is still a considerable debate around what is happening and whether that is actually allowable. And, as Dean said, it goes all the way through to ACAT. Where there is a determination that it is acceptable or that the change is rather marginal, it is not a functional change of the design itself.[261]

4.63 As noted earlier in this chapter the MBA suggested that 'front-ending a consultation' would be a preferable approach:[262]

> When we get to the development application stage, there is obviously already pre-DA consultation which is required, and there is the statutory consultation that happens through the DA. The difficulty with those is that often we are consulting on rules which are already established in the Territory Plan. We are talking about an issue of building height, setback or plot ratio, where the Territory Plan already sets that rule. I think it is really unfair that we are often re-prosecuting or rediscussing those issues when they have been discussed in the whole lead-up to that process by the developers, the community and the government.[263]

4.64 In further discussion The Property Council stated that they believed that:

> It is critical that the community understands the meaning of 'permissible' development, and that the developer is not placed in the position of having to defend what is already allowed – this is particularly important when discussing allowable heights and density.[264]

4.65 They also advocated that 'more time and resources should be devoted to developing, consulting on and adopting the generally agreed policy settings, with full community engagement, so that greater certainty can be provided to both the community and industry.'[265]

4.66 It was also agreed by some community groups that greater consultation needed to occur at a 'precinct level'.[266] The Ms Fasteas, on behalf of the Inner South Canberra Community Council (ISCCC) noted that there was a need to:

> Have the discussion between government and industry, and the community at a precinct level. Have the conversation about how people want their suburb to look in the future, because people have their own views.[267]

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[261] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 29.

[262] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 38.

[263] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 37.

[264] Property Council of Australia, *Submission 49*, p. 4.

[265] Property Council of Australia, *Submission 49*, p. 9.

[266] See for example, Ms Fatseas, *Transcript of Evidence,* 13 September 2018, p. 107; Reid Residents Association, *Submission 34*; Woden Valley Community Council, *Submission 54*; Red Hill Regenerators, *Submission 10.*

[267] Ms Fasteas, *Transcript of Evidence*, 13 September 2018, p. 107.

> If you actually had that conversation happening at that strategic level, the precinct or suburb level, then you would get everybody in the room, you would have it all out there and then I do not think you would get as many problems at the DA level.[268]

4.67 The Property Council also suggested that they would:

> …support changes to the overall approach to consultation, where engagement on Policy is comprehensive and inclusive, with the final Policy position(s) clearly articulated and widely disseminated. Once a Policy is determined in this manner, Government should then be supportive of projects consistent with Policy. This can be particularly contentious at times when community sentiment does not align with Policy directives. In these instances, strong leadership is critical to ensure our city is able to develop equitably and sustainably.[269]

4.68 The PIA 'Consultant workshop' also suggested that to support this approach 'there may be the opportunity for the community to provide direct submissions to DAs through guided inputs (drop-down menus, radio buttons etc) that would focus the public comments to matters that are directly relevant to the DA.'[270]

TRANSPARENCY OF PROCESS

4.69 A number of submitters suggested that there should be a requirement for proponents to make include additional material, such as consultation material, as part of the DA application.[271]

4.70 Alison Kelly and Paul Appleton specifically noted that:

> Developers should provide evidence of notifications provided to residents, consultations that occurred and outcomes of those consultations, as a component of their DA.[272]

4.71 Ian Elsum agreed with this approach specifying that:

> …the documentation of the community consultation provided as part of the DA should include both concerns raised by the community and the developer's response to each concern (including "no changes made or alternative design presented") and the rationale for this response.[273]

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[268] Ms Fasteas, *Transcript of Evidence*, 13 September 2018, p. 107.

[269] Property Council of Australia, *Submission 49*, pp. 3-4.

[270] Planning Institute of Australia, *Submission 29*, p. 9.

[271] See for example, Gregory Lloyd, *Submission 26;* Kelly and Appleton, *Submission 60;* Planning Institute of Australia, *Submission 29*, p. 3.

[272] Kelly and Appleton, *Submission 60,* p, 7.

[273] Ian Elsum, *Submission 8*, p. 1.

4.72 The 'Consultation workshop'[274] held by the PIA acknowledged that community consultation can be expensive and resource intensive but:

> considered that the requirement for a Consultation Report quantifying DA Consultation and statutory notification processes is useful for EPSDD and the community as it requires applicants to demonstrate what has occurred, or why comments received haven't been incorporated into the project.[275]

4.73 However, Mr Stanton, on behalf of the Combined Community Councils of the ACT, noted that the:

> DA process should not rely on developers' reports of the consultation, leaving community views until DA evaluation time. It is not fair really on developers, for that matter, to ask that they report on community views that are opposed to their commercial interests, as they often are. Rather, the process should involve receiving community views earlier so that discussions between government and developers are informed.[276]

4.74 The EDO told the Committee that they also believed that pre-DA discussions between proponent/applicants and the Planning Authority should be made more transparent:

> The idea is that those discussions, and the outcome of those discussions, are made available to third parties that are interested in the development, to see the sorts of discussions that the authority has had thus far. For example, if it is about which track the development has been lodged in, third parties may have a different view about how that has been agreed upon or how that has been come to.
>
> Being able to see the information, the thinking through and the working through of the authority where they provide that information, or where they provide that recommendation to a developer, is really important because it gives third parties an understanding that, "This is the rationale for why this has been arrived at." It feels a little less like there have been some discussions that third parties are not privy to, and they have to then scrabble along when they are making their own recommendations on development applications et cetera.[277]

EQUITY IN CONSULTATION

4.75 AHURI noted that:

[274] PIA Members who are consultants working in the DA field on a day-to-day basis; Planning Institute of Australia, *Submission 29*, p. 2.

[275] Planning Institute of Australia, *Submission 29*, p. 3.

[276] Mr Stanton, *Transcript of Evidence*, 13 September 2018, p. 96.

[277] Ms Booker, *Transcript of Evidence*, 10 September 2018, pp. 74-75.

> Problems can emerge in terms of opposition to development proposals where there is not an orderly process or power is unequally distributed.[278]

4.76 Joel Dignam from Better Renting felt that DA processes concentrated more on the views and perspectives of existing community members rather than potential new community members and there is a:

> risk that development application processes may empower one subsection of the community to safeguard its own interest in the status quo at the expense of others who are denied the opportunity to live in a desirable area.[279]

4.77 He noted that often when existing residents objected to a development it was for reasons associated with house values; infrastructure pressures and 'street appeal' whereas potential new residents would actually benefit from the development due to the ability for them to live in a desired area with 'greater amenity, at lower cost.'[280]

4.78 Whilst giving evidence to the Committee on behalf of the Griffith Narrabundah Community Association Dr Dobes acknowledged that future residents of an area are important, but stated that:

> …you cannot look into the future and say who is coming. I think the best you can do is look at the people who are living there at the moment. If other people want to contribute, you can let them contribute but they should not have as much weight as the people who are living there at the moment, because they may never come. They can only be aspirational. You do not know if they will ever come.[281]

4.79 However, Mr Moore, on behalf of the Kingston and Barton Residents Group, told the Committee that residents were not the only ones that pre-DA consultation should be undertaken with, stating that:

> In our case, we believe that the consultation has to extend to traders. It has to extend to people who have facilities in our area, like the historic railway. It has to extend to the heritage commission. It has to extend to the history people. For major projects in our area, I think that it has to be really extensive pre-consultation involving not just residents. We do not see ourselves, as residents, as being the sole people concerned by it.[282]

4.80 The Property Council acknowledged that 'there is variability in terms of the quality of consultation that is undertaken between different professionals and different organisations, so

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[278] Australian Housing and Urban Research Institute, *Submission 38*, p. 4.
[279] Better Renting, *Submission 9*, p. 1.
[280] Better Renting, *Submission 9*, p. 1.
[281] Dr Dobes, *Transcript of Evidence*, 10 September 2018, p. 19.
[282] Mr Moore, *Transcript of Evidence*, 10 September 2018, p. 19.

it is probably fair to say that not all consultation is equal.'[283] However they also told the Committee that:

> If you take the requirements around public consultation, the approach to that varies significantly. The community group previous to this talk was asked a question around the ability for one or two people to have an outspoken voice in consultation. I see that regularly in consultation. Young people come up and pull me by the cuff afterwards and say, "I didn't quite agree with that; can I give you my opinion?" But they are not prepared to speak up in that process. So allowing an avenue for others to speak in a non-community environment is important. Some of the more successful consultation processes that I have been involved with have been me knocking on the door of residences and just having a chat before we have put pen to paper. That has yielded some fantastic results, some letters of support, because they really think it is going in the right direction, as opposed to objections. So I think the inequity in that process is an issue.[284]

4.81 It was believed by the 'Consultants workshop' that there are circumstances where the pre-DA consultation process can be 'distorted' by a couple of community members with strong views. Conversely the 'Other Planners workshop'[285] noted 'it seemed that outcomes of some consultation exercises were heavily influenced by lay-person opinions on aesthetics and design quality.'[286]

4.82 In response to these claims by the industry bodies, Dr Dobes, on behalf of the Griffith Narrabundah Community Association, stated that:

> There is some truth in that obviously but it is like anything in politics where you might have someone with strong views. But they may actually represent a very large side of the majority. We cannot tell. You cannot give an objective answer to what you are asking. I think there are two sides and there is a bit of truth in both. I would not be willing to answer where the rights and wrongs were on that.[287]

4.83 Ms Gingell, on behalf of Friends of Hawker Village, indicated that:

> I think those with a passion, which we have, for preserving our residential amenity in established suburbs will speak up strongly, because developers' interests are to make money. There is always going to be tension.[288]

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[283] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 29.

[284] Mr McPherson, *Transcript of Evidence*, 10 September 2018, pp. 29-30.

[285] PIA Members who do not work in the DA field on a regular basis, but are involved in the outcomes of the DA process; Planning Institute of Australia, *Submission 29*, p. 3.

[286] Planning Institute of Australia, *Submission 29*, pp. 3-4.

[287] Dr Dobes, *Transcript of Evidence*, 10 September 2018, pp. 19-20.

[288] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 22.

4.84 Dr Fogerty, on behalf of the Hughes Resident's Association, emphasised the need for everyone to work together 'to get the best outcomes for the community'. In acknowledging the difficulties that can be encountered she highlighted the possibility that rules may need to be changed when people draw specific attention to key issues:

> You mentioned one or two people in the community making a fuss. If sun is going to be blocked into your living room for most of the day, you are going to make a fuss. You are going to be the one person making a fuss. But the next person whose sun is blocked for most of the day, they are going to be making a fuss the next time.
>
> I think when you have cases like that, it is the rules that have to change. The developer is developing under the rules or is taking the laws to the extreme. If you are consistently getting a few people making a fuss about something, maybe that something has to change.[289]

PRE-DA CONSULTATION GUIDELINES

4.85 Pre-DA Consultation guidelines (the guidelines) were introduced to encourage developers to have meaningful and considered engagement with their community prior to submitting a development application. The guidelines came into effect on 8 November 2017.

4.86 The guidelines determine the minimum engagement requirements for developers where the proposal is for a prescribed development (as per section 20A of the Planning and Development Regulation), such as:

- a building for residential use with 3 or more storeys and 15 or more dwellings;
- a building with a gross floor area of more than 5,000m²;
- a development proposal for more than 1 building and the buildings have a total gross floor area of more than 7,000m²;
- a building or structure more than 25m above finished ground level; or
- triggered by a variation of a lease to remove its concessional status.[290]

4.87 The guidelines require the developer to:

- make a site plan;
- indicative floor plans;
- elevations;
- perspectives;
- landscaping plans; and

[289] Dr Fogerty, *Transcript of Evidence*, 10 September 2018, p. 22.

[290] Pre DA Community Consultation Guidelines for Prescribed Developments, October 2017, https://www.planning.act.gov.au/__data/assets/pdf_file/0020/1125083/Pre-DA-Consultation-Guidelines.pdf, accessed 10 March 2020.

- proposed materials and finishes.[291]

4.88 There are to be made available for the public to view online on the proponent's website, or an alternative appropriate location. Face to face engagement sessions, accessible to a diverse cross-section of the community, are also required.292

4.89 The planning and land authority require, at a minimum, the developer to undertake the following:

- Ensure the community is informed about the consultation process and consulted on the proposal.
- Target a diverse demographic (age, gender, race, religion, physical abilities).
- Make available to the community conceptual drawings.
- Make available all relevant documentation - online.
- Conduct face-to-face engagement sessions that are accessible by a diverse cross-section of the community.[293]

4.90 When asked by the Committee about pre-DA consultation guidelines, the Directorate responded:

> In terms of the pre-DA consultation guidelines, the ambition when I first had those prepared and we consulted on those to make sure that we were hitting the mark was about getting the development industry in particular to understand the benefit for them if they engage very early.[294]

4.91 In their submission the Property Council indicated their support for the 'guidelines and measures required for the proponent to undertake prior for submission of a DA.' They went on to indicate that:

> The proposed measures are comprehensive and ensure that wide range of stakeholders are consulted, and their concerns are taken into consideration. The scope of pre-DA consultation is a function of the scale and impact of the proposal, rather than the locality or geographical context of the site. We consider this to be an equitable and transparent approach.[295]

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[291] Pre DA Community Consultation Guidelines for Prescribed Developments, October 2017, https://www.planning.act.gov.au/__data/assets/pdf_file/0020/1125083/Pre-DA-Consultation-Guidelines.pdf, accessed 10 March 2020.

[292] Pre DA Community Consultation Guidelines for Prescribed Developments, October 2017, https://www.planning.act.gov.au/__data/assets/pdf_file/0020/1125083/Pre-DA-Consultation-Guidelines.pdf, accessed 10 March 2020.

[293] Environment, Planning and Sustainable Development Directorate – Planning, 'Pre-DA consultation guidelines,' https://www.planning.act.gov.au/talk-with-us/pre-da-consultations/pre-da-community-consultation; Accessed 10 February 2020.

[294] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 151.

[295] Property Council of Australia, *Submission 49*, p. 3.

4.92 Ian Elsum suggested that the guidelines:

> …may result in some improvement in the community consultation process; however, additional strengthening of the community consultation process is warranted. For example, there should be more than one face-to-face consultation session, with sufficient time between sessions to enable the community to assess what's proposed and the developer to work on alternative designs that respond to community concerns.[296]

4.93 In discussions with the Committee the Directorate seemed to acknowledge that more than one consultation session was an option. They told the Committee that they advocated that developers:

> …go back and say, "This is our block of land; what we would like to do on this block of land is a residential mixed use development, and these are some of the key things that we would like to get out of the block," and start to engage with the community at that very early stage about what is important to them in terms of their local community. They might go back a second time and say, "This is what we heard, this is how we've responded to what you told us and we've started to develop what we need to get out of this site as well." It might be two or three times before you finalise the consultation report which is then submitted to the Planning and Land Authority.[297]

4.94 There were concerns that whilst the 'Pre-DA Community Consultation Guidelines have the potential to improve the outcome of major projects' there were occasions when 'the outcome appears to be pre-determined, making a mockery of any consultation, and, in some cases, pre-DA community consultation is not even occurring.'[298]

4.95 This was particularly noted when 'large scale projects' were being 'completed in stages with DAs lodged periodically, forming part of the one, large project'[299] with concerns that when this approach is taken the community is unable to comment on the wider implications of a smaller DA or be involved in any pre-DA Consultation as the smaller DAs do not require pre-DA consultation.[300]

4.96 Whilst it was agreed by the Directorate that 'there are some who are treating this as a "tick and flick" exercise' they indicated that:

> We thought we would take the approach of these guidelines being reasonably flexible, rather than coming in initially with a great big stick. We wanted to encourage people to

[296] Ian Elsum, *Submission 8*, p. 1.
[297] Mr Ponton, *Transcript of Evidence*, 13 September 2018, pp. 151-152.
[298] Inner South Canberra Community Council, *Submission 44,* p. 3.
[299] Environmental Defenders' Office, *Submission 58*, p. 8; Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 8.
[300] Environmental Defenders' Office, *Submission 58;* Dr Denham, *Transcript of Evidence*, 10 September 2018, pp. 8; 17.

understand that the benefit to proponents of doing this is that you spend a little bit of time up front, and you will have a much smoother process once the DA is formally lodged.[301]

4.97 In addition to this the KBRG noted that 'at present the thresholds for mandatory pre-DA consultation are set very high.'[302]

4.98 The ISCCC told the Committee that 'many other developments affect local streetscape and impact on the amenity of local residents' other than those currently listed in the pre-DA Guidelines. Both the ISCCC and KBRG suggested that the following are also included in the guidelines list:

- Block amalgamations
- All merit track applications
- Development affecting a property listed (or provisionally listed) on the ACT heritage Register.[303]

4.99 With the wide variety of competence by developers in conducting pre-DA consultations, it was also suggested that industry associations could contribute to the effectiveness of the pre-DA consultation process by providing training or education sessions to members of their organisations.[304]

4.100 When asked by the Committee whether the government could provide some best practice guidelines or checklists to help the pre-DA consultation move smoothly, the government agreed that the suggestion could be possible.[305]

4.101 Following the hearings the ACT Government completed a review of the Pre-DA Consultation Guidelines in 2019. The Chief Planning Executive and the Minister for Planning and Land Management have agreed to implement all recommendations from the 2019 Review. Work is now underway and is expected to be completed by mid-2020.[306]

COMMITTEE COMMENT

4.102 The Committee notes that since the bulk of evidence was received on pre-DA consultation, changes to the process have been announced by the ACT Government. These changes suggest that a number of the following recommendations in this chapter are already being

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[301] Mr Ponton, *Transcript of Evidence*, 13 September 2018, pp. 151-152.

[302] Kingston and Barton Residents Group, *Submission 39*, p. 2.

[303] Inner South Canberra Community Council, *Submission 44*, p. 3; Kingston and Barton Residents Group, *Submission 39*, p. 2.

[304] *Transcript of Evidence*, 10 September 2018, pp. 39-40.

[305] *Transcript of Evidence*, 13 September 2019, p. 154.

[306] Environment, Planning and Sustainable Development Directorate – Planning, 'Pre DA consultation guidelines,' https://www.planning.act.gov.au/talk-with-us/pre-da-consultations/pre-da-community-consultation-guidelines-review. Accessed 10 February 2020.

implemented. However, as pre-DA consultation was a major issue in the evidence received, and in the interests of completeness, the Committee believes that it should address community and industry concerns through a full suite of recommendations.

Recommendation 2

4.103 The Committee recommends that the ACT Government release updated pre-DA consultation guidelines containing more detailed information on best practice methods and stronger recommendations on expectations of the level of required community consultation.

Recommendation 3

4.104 The Committee recommends that the ACT Government consider expanding the types, scale and/or locations of developments which require pre-DA consultation, in line with community feedback.

Recommendation 4

4.105 The Committee recommends that the ACT Government require proponents to provide with their DA a report on pre-DA consultation with the community, including any actions taken by the proponent as a result of community feedback, and that this be released at public notification of the DA.

Recommendation 5

4.106 The Committee recommends that the pre-DA guidelines require public meetings to conducted with adequate notice and that all affected stakeholders, including residents and traders are informed.

Recommendation 6

4.107 The Committee recommends that the ACT Government works with industry and professional bodies to provide training for consultants and the development industry on best practice approaches to pre-DA consultation.

5 STATUTORY NOTIFICATION

5.1 Once a proposal is formally lodged as a DA, it will undergo a statutory notification process. This is undertaken by the planning and land authority in accordance with the *Planning and Development Act* 2007.

5.2 As discussed in Chapter 3 there are two categories of public notification:

1) Minor notification; and
2) Major notification[307]

5.3 A major or minor notification may apply to merit track DAs, and major notifications will always apply to impact track DAs. Sections 27 and 28 of the Planning and Development Regulation 2008 determine whether a DA requires minor or major notification and the applicable timeframe for the public notification period during which representations can be made.

5.4 Whilst this notification period ranges between 10-20 days in the ACT, other jurisdictions have a notification period of between 14 days and 28 days, depending on the type of development.

AWARENESS OF DEVELOPMENT APPLICATIONS

5.5 The Woden Valley Community Council acknowledged 'that at times it is difficult to engage the community on planning matters' however they articulated the concerns of many submitters when stating that 'it is very difficult to know when a DA has been lodged.'[308]

5.6 The Hughes Residents Association and Friends of Hawker Village made particular note of what they felt was an unreasonable 'expectation that most residents will keep a check on DAs':[309]

> ACT residents and community organisations are busy and under-resourced and should not be expected to constantly comb the DA website in case DAs have been lodged which directly affect them, or in which they have an interest well known to the Government.[310]

5.7 When asked by the Committee whether neighbours are notified, the Directorate stated that neighbours are notified that works are going to commence through the building approval process. The certifier is required to notify neighbours before building work commences.[311]

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[307] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications; Accessed 10 February 2020.

[308] Woden Valley Community Council, *Submission 54*, p. 4.

[309] Friends of Hawker Village, *Submission 11,* p. 2.

[310] Hughes Residents Association, *Submission 40*, p. 4.

[311] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 166.

5.8 The Hughes Residents Association noted that this does not always occur and their experience has been that notification of a neighbouring DA is often when 'bulldozers and wrecking machinery arriving at 7am to knock down a nearby dwelling', unless 'you actually share your fence with the development.'[312]

5.9 They went on to state that when notification does occur it is 'in the form of an uninformative postcard in the letterbox' that leaves residents with the only way to get information being from the owner (often a neighbour you would like to not have strained relationships with) or the on-site builders.[313]

5.10 The Hughes Residents Association suggested that:

> If a DA is lodged which requires a Territory Plan variation, major lease variation, loss of green space or other major impact, or relates to a site in which there is known community interest, written notification of local residents and community organisations should be required on lodgement, with at least six weeks for feedback.[314]

5.11 They suggested that 'letter box drops to all houses and offices within a 200m radius' should apply for any DA that proposes an increase in building footprint, a reduction of green space, loss of native woodland or grassland or removal of mature trees.'[315]

5.12 The Campbell Community Association also suggested that 'broader notification and longer consultation with adjoining owners and the neighbourhood is required where there is an increase in the number of dwellings, style and height as well as removal of all existing landscaping / trees.'[316]

5.13 When discussing DAs that are notified, Mr Temple made note of the cessation of notices in the Canberra Times and the reliance on a website to notify the community of DAs. He indicated that

> The excellent notification of DAs and DVs in The Canberra Times ceased for some unknown reason in 2016…The standard answer is look on our website – but many people (especially the elderly) do not own computers and smart phones – but they can read and are just as concerned. Surely, it is the duty of Government to be open, frank and transparent for ALL with DAs being openly advertised through the media.[317]

5.14 The Environmental Defenders Office (EDO) also noted the impact of the cessation of notices in the Canberra Times:

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[312] Hughes Residents Association, *Submission 40*, p. 1.
[313] Hughes Residents Association, *Submission 40*, p. 2.
[314] Hughes Residents Association, *Submission 40*, p. 5.
[315] Hughes Residents Association, *Submission 40*, p. 3.
[316] Campbell Community Association, *Submission 18*, p. 2.
[317] M Temple, *Submission 28*, p. 1.

> … opportunities to comment are limited to what can be found on the ACT Planning website. This limits exposure to opportunities for comment to those members of the public with access to the internet or a computer. Consideration needs to be given to providing exposure to opportunities to comment in different fora.[318]

5.15 In this context the EDO suggested that additional methods of engagement are necessary:

> Members of the public now engage with information and opportunities to comment in different ways. Social media has gained popularity as a place to disseminate information. It is suggested that more dynamic methods be used by the Planning and Land Authority to disseminate notification of, particularly major, developments. This may include notifications on social media, but may also include in local public spaces (e.g. libraries) for those without internet access to be able to engage with these processes.[319]

5.16 The Red Hill Regenerators noted the importance of community groups in the ACT and how they are often the conduit between government and residents, schools, churches, sporting groups etc, in the community. They suggested that the Authority could communicate with them and that they in turn would 'spread the word':

> The Regenerators' experience is common to other community groups with clear, long term and strong connections to pieces of land, over which development applications have been lodged. It is not beyond the abilities of the Directorate that groups could be notified directly about a development application on land for which they have strong connection.[320]
>
> In a situation like a development on Red Hill, a major development of 500 apartments, the Red Hill Regenerators are well known to the government and it would not be hard to engage with either our group or one of the other community groups and say, "Can you help us spread the word that this development is happening?" That would not be difficult to do. There is a network of interested community groups that would spread the word very quickly. That is another way of achieving it.[321]

Recommendation 7

5.17 The Committee recommends that the Directorate utilise social media avenues to notify the ACT community of Development Applications that are likely to be of wide community interest, such as Development Applications that received high community interest during pre-DA consultation.

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[318] Environmental Defenders' Office, *Submission 58*, p. 7.
[319] Environmental Defenders' Office, *Submission 58*, p. 7.
[320] Red Hill Regenerators, *Submission 10,* p. 2.
[321] Mr Kingsland, *Transcript of Evidence*, 10 September 2018, p. 82.

OPPORTUNITIES TO COMMENT – PRE DECISION

5.18 Depending on the nature of the DA there can be number of opportunities for comment, in addition to the notification period. These can include during pre-DA consultations; the formulation of Environmental Impact Statements (EIS); and the drafting of applications for an EIS Exemption.

5.19 When asked by the Committee at what point the community has input, the Directorate stated that:

> The community…have input at a pre-lodgement consultation phase, if there is pre-lodgement consultation required for the DA. The other…point on all merit tracked DAs is the public notification stage, which runs for three weeks, where the community can provide a list of their issues that they identify…
>
> There may also be a further opportunity down the track if the assessment, for example at the initiative of either the applicant or of the authority, is amended. Then there is a legal obligation on the authority to decide whether to renotify that. There is a discretion on the authority to renotify the application. If that gets renotified…the community is again engaged through that process.[322]

5.20 In an Answer to a Question on Notice about the process for making comments on a development application and a reconsideration, the Directorate stated:

> The different processes for notification and consultation for an original development application and a reconsideration application reflect the different requirements of the *Planning and Development Act* 2007 (the Act) for each process.
>
> Original development applications are required to be notified under division 7.3.4 of the Act. Where a development application is required to undergo major public notification, the planning website is used to give notice to the general public and provides a mechanism for the public to give comments via the website or email. This is the most efficient method for notifying the general public.
>
> For reconsideration applications, section 194 of the Act specifically provides that the application need not be notified under division 7.3.4. However, written notice must be given to each person who made a representation on the original application.[323]

5.21 The EDO noted in their submission that the aforementioned opportunities to comment cannot be accessed easily on the website:

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[322] Mr Cilliers, *Transcript of Evidence*, 13 September 2018, p. 150.
[323] *Answer to Question on Notice No 14,* answered 2 October 2018.

> … it is difficult to find these opportunities to comment on the website. Further, unless you are looking out for a particular opportunity to comment, it is easy to miss out on an opportunity.[324]

5.22 Following on from this observation the EDO suggested that:

> All opportunities to comment need to be combined into a central page for all stages of the development application process. This will show the interconnectedness between all opportunities to comment and be easier for the user to navigate.[325]

NOTIFICATION PERIOD AND SUBMISSIONS/REPRESENTATIONS

5.23 As indicated in Chapter 3 the EPSDD Website lists all development applications open for public comment that have been received by the Authority.

5.24 During this this notification period the community has the opportunity to submit a written representation, which will then be taken into consideration during the assessment of the development application.[326]

5.25 The Directorate indicated that:

> …as part of the actual public notification…we…want to understand what the key issues are that the community are concerned about. That is what we would like a full understanding of before we commence our assessment.[327]

5.26 It was stated by a number of witnesses that the time given for community representation is insufficient[328] and does not 'provide members of the public with sufficient time to difficult to provide comments on sometimes complex development applications.'[329]

5.27 Carol Russell suggested that the 'time for community representation should be automatically adjusted according to the length of the documents and the difficulty of their content.[330]

5.28 The EDO suggested that 'all notification periods be for 30 days' and that there should be a discretionary power to extend the notification period[331] when needed, particularly for

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[324] Environmental Defenders' Office, *Submission 58*, p. 5.

[325] Environmental Defenders' Office, *Submission 58*, p. 6.

[326] Environment, Planning and Sustainable Development Directorate – Planning, 'Development applications open for public comment,' https://www.planning.act.gov.au/development_applications/pubnote, accessed 9 October 2019.

[327] Mr Cilliers, *Transcript of Evidence*, 13 September 2018, p. 151.

[328] See for example, Margaret Dudley, *Submission 35;* Carol Russell, *Submission 32;* Environmental Defenders' Office, *Submission 58;* Ian Elsum, *Submission 8*; Inner South Canberra Community Council, *Submission 44*; Campbell Community Association, *Submission 18*.

[329] Environmental Defenders' Office, *Submission 58*, p. 8.

[330] Carol Russell, *Submission 32*, p. 4.

[331] See Section 156(3) Planning and Development Act 2007.

notification periods 'involving a major, complex development, or a development application lodged in the impact track.'[332]

5.29 The Campbell Community Association suggested that 'a minimum of two months is required for public consultation to enable residents to read plans and respond'[333] whilst the Hughes Residents Association suggested at least six weeks.[334]

5.30 It was also noted by a number of submitters that the notification period includes the summer holiday period when a significant number people are either unaware of or unable to participate in the consultation process because they are on holidays.[335]

5.31 It was suggested that the public notification period should never include a holiday period[336] and that 'any DA lodged in the month of December should have an automatic six weeks for submissions to be made.'[337]

COMMITTEE COMMENT

5.32 The Committee notes that other jurisdictions have similar period of time for the community to make representations on developments. However, the Committee also notes that the complexity and impact of a development is not an element considered in the length of the notification period. Where a DA is highly-complex, it takes community members longer to work through the details to understand the proposal and to write submissions, noting that they need to do this around their normal daily life. High-impact and particularly controversial DAs also tax submitters, as community groups often undertaken their own community engagement process (for example doorknocking the local area) before putting in a submission. In both these cases, a longer notification period is required.

5.33 The Committee notes that the Directorate currently puts into place special arrangements for DA public notification over the Christmas period.[338] However, DAs are still frequently released for public notification immediately after New Year's Day when community groups (and the building industry itself) are largely not operating and many residents are out of town.

Recommendation 8

[332] Environmental Defenders' Office, *Submission 58*, p. 8.

[333] Campbell Community Association, *Submission 18*, p. 3.

[334] Hughes Residents Association, *Submission 40*, p. 5.

[335] See for example: Environmental Defenders' Office, *Submission 58;* Michael Nash, *Submission 6;* Carol Russell, *Submission 32*.

[336] Carol Russell, *Submission 32*, p. 4.

[337] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 1.

[338] Accessible at https://www.planning.act.gov.au/whats-new/special-arrangements-for-public-notification-of-development-applications-over-the-2019-20-christmas-and-new-year-period.

5.34 The Committee recommends that more complex and higher-impact Development Applications are more widely notified and are given a longer notification period.

Recommendation 9

5.35 The Committee recommends that, in addition to current special arrangements, that when Development Applications are put on public notification over the Christmas period, the days between the 20 December and 10 January are not to be counted as part of the notification period.

Recommendation 10

5.36 The Committee recommends that the ACT Government consider amending the *Planning and Development Act* 2007 to harmonise the representation processes for initial development application public notification and development applications undergoing reconsideration so that different systems and approaches are not taken.

DEVELOPMENT APPLICATION NOTIFICATION MEASURES

SIGNAGE

5.37 DA signage is required as part of the statutory notification process set out in the *Planning and Development Act* 2007.[339]

5.38 A number of submitters commented on the difficulty in accessing the signs.[340] They highlighted to the Committee that often signs are unable to be seen when driving past, signs are obstructed by shrubbery and signs face unfrequented areas.[341] In addition to 'questionable placement' some submitters also claimed the signs contained inaccurate information.[342]

5.39 The KBRG also noted that they had observed several instances of:

> …where DA signage has gone up days after the notification period has begun and also instances where the proponent has removed signage altogether. On one occasion the signage was witnessed in a skip bin on the property…[343]

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[339] See *Planning and Development Act* 2007, Division 7.3.4

[340] See for example, Woden Valley Community Council. *Submission 54*; Hughes Residents Association, *Submission 40;* Gregory Lloyd, *Submission 26;* Friends of Hawker Village, *Submission* 11; Kingston and Barton Residents Group, *Submission 39*; Hughes Residents Association, *Submission 40*.

[341] Hughes Residents Association, *Submission 40*, p. 2.

[342] Dr Klovdahl, *Submission 61*, p, 2.

[343] Kingston and Barton Residents Group, *Submission 39*, p. 2.

5.40 Concurring with the aforementioned issues, Gregory Lloyd noted that current signage is currently only of use to 'a time-rich pedestrian passerby, capable of reading an enormous block of text to discern whether it is of interest'.[344]

5.41 He suggested that the signage be made 'visually distinctive, easy to read at a distance, and the text could be made snappier' so that passerby in a car or on a bike are able to see and known what is proposed and when they need to respond by.[345]

5.42 The Hughes Residents Association suggested that a 'large and prominent sign by the main access to the premises' and notices at the 'local shopping centre on a dedicated ACT Government noticeboard' should be required for any DA that proposes an increase in building footprint, a reduction of green space, loss of native woodland or grassland or removal of mature trees.'[346]

5.43 The ACT Government assured the Committee that they had recently undertaken:

> a project to review and improve the language and visual appeal of DA signage and to make signage more user-friendly for the community. A number of improvements were made including altering the language used to make it easier to understand whilst also complying with the legal obligations for the signage. The visual appeal of signage was also improved and branding aligned to mirror ACT Government brand guidelines.[347]

5.44 In his opening statement to the Committee the Minister also stated that:

> The Planning and Land Authority has also recently taken the opportunity to improve the DA notification process by making updates to DA signage locations at development sites.[348]

Recommendation 11

5.45 The Committee recommends that the Directorate includes a colour image of the proposed development on Development Application signage where the Development Application proposes significant building works.

DIGITAL NOTIFICATIONS

5.46 The Gungahlin Community Council made note of the issues faced with current online digital notification processes:

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[344] Gregory Lloyd, *Submission 26.*
[345] Gregory Lloyd, *Submission 26.*
[346] Hughes Residents Association, *Submission 40*, p. 3.
[347] ACT Government, *Submission 42,* p. 3.
[348] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 141.

> The DA digital notification process is antiquated and relies heavily on residents and other interested stakeholders actively polling a website with rudimentary search and filter functions. The process needs to include modern "push" methods leveraging existing social media tools (Twitter, FaceBook, etc.) that have broad-based usage and support cross-posting and re-posting.[349]

DA FINDER APP

5.47 In his opening statement the Minister indicated that:

> …the DA finder app has proved to be very popular since being introduced in 2014. The app allows a user to be notified of an DAs, Territory Plans variations and environmental impact assessments within a specified area…also…to provide formal comments during the public notification period. [350]

5.48 Whilst many submitters agreed that the DA Finder App was a useful and valuable resource[351] it was also suggested that it was not easy to use and unreliable.[352]

5.49 It was noted that not all DAs were on the app. Angela McGrath explained in her submission that the DA Finder was very useful for searching for current applications but that, as discussed later in this report, once a DA decision had been made 'they seem to disappear and it is difficult to find details of the decision itself.'[353]

5.50 The Kingston and Barton Residents Group (KBRG) noted that the DA Finder App 'does not allow you to select notifications for more than a single suburb, additional information is only available as you click through various links – for example Territory Variations are not flagged on the map page.'[354]

5.51 A number of suggestions were made to improve the app.

5.52 Both the Inner South Canberra Community Council (ISCCC) and the Hughes Residents Association noted that the app needed to include all current DAs, particularly those related to 'building works increasing the building footprint or reducing green space, and all applications awaiting decision.' [355]

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[349] Gungahlin Community Council, *Submission 22*, p. 2.

[350] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 141.

[351] See for example, Gungahlin Community Council, *Submission 22*; Hughes Residents Association, *Submission 40*; Inner South Canberra Community Council, *Submission 44*.

[352] Gungahlin Community Council, *Submission 22*, p. 2.

[353] Angela McGrath, *Submission 36*, p. 1.

[354] Kingston and Barton Residents Group, Submission 39, p. 1.

[355] Hughes Residents Association, *Submission 40*, pp. 2-3; Inner South Canberra Community Council, *Submission 44*, p. 2.

5.53 Dr Klovdahl suggested that instead of only being able to specify a narrow area of interest on the app that:

> One should be able to specify, across the whole of the A.C.T., a suburb of interest, any Centre(s) of interest (and their catchment areas), any Lease or Lease type of interest, any institution or type of institution of interest, and so on, … and be automatically emailed notification of any DA in one or more of these categories.[356]

5.54 The Griffith Narrabundah Community Association, Angela McGrath and the ISCCC agreed that anyone should be able to 'click on any block and access easily all the building codes and lease conditions for that block.'[357]

5.55 Whilst the Hughes Residents Association suggested that the DA Finder App 'should be linked to ACTMapi and/or other Government resources in a way that enable an ordinary person to quickly and easily check the status of a block, including zoning and other key matters,'[358]Angela McGrath also indicated that ACTMapi should have 'a simple link to all relevant development information, including current and past development applications and details of decisions for each block.'[359]

5.56 The Committee noted that the response to the DA Finder App has been rather mixed. However the Directorate maintained that it has been very successful despite the need for updates:

> The DA app has proven to be more successful than we envisaged and we have a got lot more feedback on its use and functionality than we thought we would. It is fair to say that when we embarked on the project we did not invest heavily in it because we thought it was something that would be of interest to some people…We have found that not only is it well used—3,500 as Mr Phillips said—but the expectation from the community is that the DA app will be almost as functional as the website and have all of the documentation.
>
> The idea was that you are walking down the street, you see something going on, you do it and then when you are back in the office or back at home you get on the computer and do it. We have now tried to catch up a little bit, but in that context we probably could have done a lot more thinking at the beginning and a hell of a lot more investment and we would have ended up with a better product…We are building and learning as we are going…every new version will try to address the feedback that we are hearing, but we have a long way to catch up to where people expect government online services in a tablet format to be.[360]

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[356] Dr Klovdahl, *Submission 61*, p. 1.
[357] Inner South Canberra Community Council, *Submission 44*, p. 2.
[358] Hughes Residents Association, *Submission 40*, p. 3; Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 9.
[359] Angela McGrath, *Submission 36*, p. 1.
[360] Mr Rutledge, *Transcript of Evidence*, 13 September 2018, pp. 157-158.

WEBSITE

5.57 As highlighted by the Directorate there is an expectation that what is available on the website correlates with what is available via the DA Finder App.

5.58 The Environmental Defenders' Office (EDO) suggested that in addition to being able to search for DAs on the website by DA closing date, district or DA number that 'DAs can be searched by the type and size of development' and like the DA Finder App, included on a map so as to make it 'easier for the public to see the size and location of the development to scale.'[361]

5.59 The EDO noted that 'presently, some of this information is available by searching the relevant block and section on the ACTmapi viewer' but the information was not centrally located. They advocated that 'this information needs to be readily available in the one place, attached to the relevant application, rather than requiring members of the public to search for this information themselves.'[362]

5.60 In his opening statement to the Committee, the Minister stated that:

> The government is…undertaking an update of the planning website to improve user experience and make it easier for the general public to find information...it is expected that a new website will be launched later this year and will feature…improved layout and updated information…[363]

Recommendation 12

5.61 The Committee recommends that the Directorate expediate improvements to the Development Application Finder App.

Recommendation 13

5.62 The Committee recommends that the Directorate provide a desktop version of the Development Application Finder App, or provide an alternative method for individuals and community organisations to sign up for email notifications of new Development Applications in particular areas.

[361] Environmental Defenders' Office, *Submission 58*, p. 7.
[362] Environmental Defenders' Office, *Submission 58*, p. 7.
[363] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 140.

6 ACCESSIBILITY OF DEVELOPMENT APPLICATION INFORMATION – COMMUNITY PERSPECTIVE

6.1 Community Groups and individual residents consistently informed the Committee that accessibility to DA information was not ideal. In particular it was noted that:

- Information provided is not comprehensive;
- Information is fragmented between different guides and in different locations on the website;
- The guides are limited in audience and are not in pain language or design;
- There is limited information on public consultation;
- Amended documents are not supplied; and
- Previous DAs are not easily accessible; decision on DAs are not accessible.[364]

6.2 Mr Hopkins, on behalf of the Master Builders Association (MBA), told the Committee that:

> …information about planning policies and development applications should to the greatest extent possible be transparent and easy to access. Information about the Territory Plan, master plans and DA should be easy and free to access. Transparency should be used to foster a greater understanding by the community of the type of development being proposed in their suburbs, and we think transparency will ultimately lead to greater trust between community developers and the planning authority.
>
> From a review of the submissions received by the committee, providing greater transparency in the DA process seems to be supported by a number of stakeholders, and we would certainly support these improvements, especially using technology to facilitate greater access to information.[365]

6.3 Mr Hopkins, however cautioned the Committee that:

> It is important to understand that greater access to information does not have to mean increased obligations to consult, nor does it have to mean additional legal rights of appeals being created. In simple terms, informing the community or consulting with the community are two different things.[366]

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[364] See for example, Environmental Defenders' Office, *Submission 58*, p. 10; Kingston and Barton Residents Group, *Submission 39*; Campbell Community Association, *Submission 18*; Inner South Canberra Community Council, *Submission 44*; M Temple, *Submission 28*; Gregory Lloyd, *Submission 26*; McGrath, *Submission 36.*

[365] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 34.

[366] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 34.

COMMUNITY UNDERSTANDING AND INPUT INTO DEVELOPMENT APPLICATIONS

6.4 The Woden Valley Community Council told the Committee that:

> …information in the DA can be difficult to synthesise into an understanding of the development. This is because the DA is similar to a check list and it can be difficult to determine what the DA is seeking approval for, particularly for changes to commercial premises.[367]

6.5 The Kingston and Barton Residents Group (KBRG) also noted the 'Territory Plan and Regulations are also available on-line but these are very complex and it is hard to identify all the matters relevant to a particular DA.'[368]

6.6 In communicating to the Committee the difficulties that community groups and individuals have in preparing submissions and reviewing development applications, Ms Gingell, on behalf of Friends of Hawker Village, explained the process they go through:

> From our perspective, we look for notifications on the website. We look for signs going up around the suburb. We listen to word-of-mouth information about things that might be happening in the neighbourhood. We check as best we can the plans and the statement against rules and criteria, and then we draft our submissions and we wait.
>
> When the notice comes out, if the decision is in favour of the proponent we then have to sit down and consider other issues. Because zone objectives are taken into account in the assessment process but cannot be used in the appeal process, we have to go through very carefully to find what rules may have been broken. They are usually not; it is usually around the criteria that we have spoken of. But it is very subjective.
>
> We then have to make a decision. We do not have much money and it costs us money to go to the tribunal. So we basically have to weigh up whether we think we have a chance of getting a better outcome through lodging an appeal.[369]

6.7 She also stated that:

> It is an enormous amount of work and time. Even within an organisation, preparation of submissions, checking them and looking at all of the plans is an enormous effort. It is very tiring, especially when you go through the process and you go to the tribunal and the focus on the rules and criteria and the leniency that is permitted even in the review

[367] Woden Valley Community Council, *Submission 54*, p. 5.
[368] Kingston and Barton Residents Group, *Submission 39*, p. 1.
[369] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 12.

> process makes it seem like you are really in an uphill battle and that the situation is unfairly stacked against you.[370]

6.8 Ms Cully, on behalf of the Hughes Resident's Association, echoed these sentiments, telling the Committee that:

> Our organisation is not a paid professional organisation; we are the residents of Hughes. We do not have the funding and the resources to operate as a kind of organised scrutineer of every development application that gets put up.[371]

6.9 Community groups told the Committee that in order to engage on development applications they either had to upskill themselves or seek out professional help.

6.10 Dr Dobes, on behalf of the Griffith Narrabundah Community Association, noted that

> We upskill ourselves in two ways: one is learning on the job by learning from other people and reading plans and getting someone to help you understand them and so on. But we also go to government, and some of the officials that work in government are very helpful in explaining things to us. We write these things up, we write up processes, and we put them on our website so our fellow residents can understand what is going on.
>
> We have on our website, for example, a very easy to understand explanation of the difference between plot ratios and private open space. We also have an information sheet on DA exempt developments to explain how that process works, but we are still confused as to how it works.[372]

6.11 In explaining how they were able to learn what to do, Dr Dobes explained that it was difficult to find information and that they have had to get assistance from the Directorate in explaining the development application process. He went to tell the Committee that it was 'impossible to upskill yourself entirely':[373]

> Yes, we try to make ourselves aware of the rules, but you cannot do everything when you are just a volunteer.
>
> We do not sit there all day going through the rules and criteria. We do not have that knowledge; we have to go back every time and go through all of those documents.[374]

[370] Ms Gingell, *Transcript of Evidence*, 10 September 2018, pp. 10-11.
[371] Ms Cully, *Transcript of Evidence*, 10 September 2018, p. 13.
[372] Dr Dobes, *Transcript of Evidence*, 10 September 2018, p. 11.
[373] Dr Dobes, *Transcript of Evidence*, 10 September 2018, p. 12.
[374] Dr Dobes, *Transcript of Evidence*, 10 September 2018, p. 12.

6.12 Margaret Dudley indicated that engaging professional help resulted 'in large financial outlays' which she maintained should not need to occur as 'it should not be up to the affected party to have to pay to make sure developers are abiding by the rules.[375]

6.13 In response to community concerns the Directorate assured the Committee that:

> An objection to a development does not need to address every point…We do not expect them to go through and analyse and engage an engineer to look at whether the traffic report and the methodology sitting behind that are adequate…It is about providing the information that has been given to us for that public comment. It is our job to assess the application.[376]
>
> If people want to…look at every single rule and criterion we are more than happy for them to do that…[but] there is no expectation that people do that.[377]

6.14 The Chair of the Committee sought clarification on what was required:

> Assuming there is a building that is being built and it is not in mission brown, so I do not like it, if you had talked to me a day or two ago, I would have assumed that what I needed to do was go through the DA application and find five things or 10 things that, apart from the colour, were actually wrong with it, so that when you looked at it you would go through it…you would find some more, and you would say, "No we do not like it." What I am hearing you say is that I should just put in my comment saying, "It's dusty pink; it should be mission brown. All the other houses on the street are mission brown." And I should not worry at all about anything else, on the assumption that you will find it.[378]

6.15 In response the Directorate agreed.

6.16 Both Dr Denham, on behalf of the Griffith Narrabundah Community Association and Friends of Hawker Village noted that most people only 'encounter this sort of situation only once or twice in their lifetime so they do not understand what is going on':[379]

> Very few residents are aware of the DA process and, when they are aware, many are not confident in interpreting the information available on the website. Even when directly affected and concerned about certain aspects of a proposal, many people feel awkward with the response required. The result is a response that might describe their concerns but, expressing preferences rather than addressing the rules and criteria,

[375] Margaret Dudley, *Submission 35.*
[376] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p.144.
[377] Mr Ponton*, Transcript of Evidence*, 13 September 2018, p. 148.
[378] Ms Le Couteur MLA*, Transcript of Evidence*, 13 September 2018, p.147.
[379] Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 12.

> does not necessarily have the desired result. There is a feeling that such responses are likely to be dismissed out of hand.[380]

6.17 In addition to the assistance of community groups like the Griffith Narrabundah Community Association the EDO indicated that their office:

> ..often assists or takes inquiries from members of the public who would like to engage with a development application process, but find it difficult to navigate the ACT Government's Environment, Planning and Sustainable Development Directorate - Planning website (ACT Planning website), or access and understand information on DAs generally. Clients often find both the form and the substance of DAs difficult to understand. The PD Act is often described as a challenging piece of legislation that is difficult to grapple.[381]

6.18 Whilst it was widely understood that planning is very technical, it was pointed out to the Committee that measures should be undertaken so that the community can easily access the required information and contribute more productively to the development application process:

> However, why do we have DA consultation processes and DAs online if the idea is that this is so complex that ordinary people cannot understand it? The whole purpose of this system is to make changes to plans and changes to buildings accessible to ordinary people so that they can look on the DA website and see straightaway, "Yes, that's fine. I'm fine with that; that's good." Or, "I have some concerns about my access to sunshine; I just need to clarify that."
>
> It needs to be simple. This is a technical skill. Making complex information accessible to ordinary people is a very common technical skill across all areas, particularly in health, where many people's jobs involve making very complex matters accessible to ordinary consumers so that they can understand it. That is what we need here. We need a development application system that is not opaque, that welcomes interested input and that makes it easy and sympathetic for people to take an interest in their environment, in their suburb.[382]

6.19 The Campbell Community Association noted that 'Reading DAs is a specialised process. Therefore, a foundation level of understanding is required prior to reviewing a DA.' They suggested that 'the ACT Government should provide access to neutral advisers in relevant professions to help Canberra residents navigate the DA process and read building plans.'[383]

6.20 They also told the Committee that:

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[380] Friends of Hawker Village, *Submission 11*, p. 1.
[381] Environmental Defenders' Office, *Submission 58*, p. 2
[382] Dr Fogerty, *Transcript of Evidence*, 10 September 2018, p. 16.
[383] Campbell Community Association, *Submission 18*, p. 2

> Within ACTPLA there should be people with engineering and architecture skills and so forth, to help people who have queries. Everything is online. If you want printed stuff, you have to pay for it. Plans are difficult to read, and there need to be people on hand who can explain some of the technicalities or what the effect might be on the adjoining owners.[384]

6.21 Ms Gingell, on behalf of Friends of Hawker Village, noted that:

> At one stage, years ago, there was an idea put forward that there should be some kind of funded advocate for people like us who would have the expertise. I guess the money was not available. That could be a problem within the department itself. Perhaps they just do not have the resources to do the scrutiny or have the skills. It seems to be a big problem.[385]

Recommendation 14

6.22 The Committee recommends that funding is provided to the Combined Community Councils of the ACT or Environment Defenders' Office to provide an advisory service to help community members engage effectively with Development Application and other planning processes.

ISSUES WITH ACCESSIBILITY

ACCESS TO READABLE VERSIONS OF DEVELOPMENT APPLICATION DOCUMENTS

6.23 The Committee was informed that physical access to DA documents was difficult.

6.24 Carol Russell highlighted in her submission to the inquiry that:

> The practicality of DA plans downloaded from the website is impaired by an A4 printout being the highest resolution available on most home computer systems. This renders them largely unreadable and certainly not conducive to making any detailed analysis of their compliance or otherwise with legislation and government policy.[386]

6.25 Michael Nash and Carol Perron also referred this issue in their submission adding that:

[384] Ms Doyle, *Transcript of Evidence*, 13 September 2018, p. 115.
[385] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 17.
[386] Carol Russell, *Submission 32*, p. 5.

> They need to be at least A3 size to be clearly readable and their measurements architecturally assessed. The alternative is to have them printed commercially at the respondent's cost.[387]

6.26 In evidence to the Committee Mr Moore, on behalf of KBRG, gave the following example of the issues with readability:

> For a recent DA we requested the plans, and the plans for this DA were quite critical because of the nature of the DA. We could not read the plans when we got the download and we thought that was pretty bad. We complained to planning and they said, "Come into the office and have a look at the plans we have in the office."
>
> So we went into the office to look at the plans and we discovered that the plans in the office were unreadable too, a critical area of the plans. They had made their decision without being able to read the plans themselves. We had to go to the consultants who drew up the plans to get a copy that was legible.
>
> We could not read it, but what is most concerning is that the planning department were not able to read it either and yet they had made their decision.[388]

6.27 He further indicated that the lack of readability was also because of the disconnect between A4 & A3:

> It was too fine detail and it was an A3 plan. It was an A4 distribution and the plan was A3. It had been contracted down and became unreadable. So the government made a decision on a critical DA without being able to read the plan. We were astounded.[389]

6.28 Patrick Dodgson also noted another issue. In that in order to view files for a reconsideration DA he had already commented on, he was required to sign up to a private third party site that had 17 pages of terms of service and conditions with the only other option being to attend the Dickson Office personally to download the files. He advocated that:

> There must be a better way to let people see planning proposals without imposing the unreasonable requirement to analyse and agree to 17 pages of contract with a 3rd party, or to travel to Dickson with a USB stick.[390]

COMMITTEE COMMENT

6.29 The Committee believes that the best solution to the quality of documentation problem is greater depth of checking of DAs during the completeness check stage, and has made a recommendation to this effect in Chapter 7.

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[387] Michael Nash, *Submission 6*.
[388] Mr Moore, *Transcript of Evidence*, 10 September 2018, pp. 14-15.
[389] Mr Moore, *Transcript of Evidence*, 10 September 2018, p. 15.
[390] Patrick Dodgson, *Submission 63*.

AMENDED DAS NOT SUPPLIED

6.30 Gregory Lloyd noted that all documentation disappears from the website shortly after comments close and as such 'the public cannot review (unless they have retained them) the development documents, and they do not even know when new versions are prepared.'[391]

6.31 Mr Lloyd acknowledged that expedience and practicalities often dictated whether a revised DA would be subject to further consultation, however he was concerned that often 'final development plans are not made publicly available to representors' and 'large developments may incrementally become substantially different from that initially put out for DAs, and this only discovered when the building is unveiled.'[392]

6.32 The Gungahlin Community Council (GCC) expressed their concerns that there appeared to be a lack of transparency in these processes and raised the following issues:

> • Despite evident community concern, the Directorate can unilaterally exclude the community from further involvement and consideration of an amended design on the grounds that we are no further disadvantaged by the amended design.
>
> • This lack of transparency and involvement reduces confidence that the final approved design is in accordance with community wishes.
>
> • It also means EPSDD is making decisions without community input on where the community's disadvantage ceases or diminishes, increasing the risk of a decision that is not in line with community expectations.
>
> • Whilst the GCC appreciates there needs to be scope for judgement by the Directorate on when to (or not) consult with interested stakeholders on amended proposals, this judgement should align with community expectations. The GCC is unsure as to the best mechanism to ensure continuing community involvement in amended proposals where it is all parties best interests.
>
> • Lack of transparency on the status of the DA process in that GCC had to repeatedly chase for an update, information has been slow to be released, no update has been provided to other parties who also made a representation, and there existed a reluctance for GCC to provide an update to the community on this process.[393]

6.33 Ms Gingell, on behalf of Friends of Hawker Village, noted that often a development is approved with a list of conditions that 'rely on further documentation or amendments to plans being lodged' the developer has 20 days to lodge them.[394]

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[391] Gregory Lloyd, *Submission 26.*
[392] Gregory Lloyd, *Submission 26.*
[393] Gungahlin Community Council, *Submission 22*, p. 3.
[394] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 13.

6.34 She noted that even though the community only has 20 days to lodge an appeal following the DA approval the community does not 'have access immediately to all the changes the developer has been required to make' before having to decide whether to appeal or not. Effectively 'by the time the developer puts in those amendments the appeal time period to lodge an application will have passed.[395]

6.35 A number of submitters emphasised that the community, including those who have made representations are not being advised of changes to documents or amended DAs and it was repeatedly suggested that 'any variations to the proposal while still under consideration by ACTPLA should be notified to the community.'[396]

6.36 Angela McGrath also reiterated that:

> When plans are revised and submitted to the Planning Authority for reconsideration, they should be made available to all affected parties, including neighbours who did not object to the original DA.[397]

6.37 In this context Gregory Lloyd suggested that representors be notified of changes and the nature of changes and that the new versions of the plan be placed on the website.[398]

6.38 Concerns about the community's ability to comment on proposed amendments to development applications were also raised in an Estimates hearing in 2019. The Estimates Committee were informed that:

> … depending on the nature of the amendment proposed, it can be renotified. If it is minor internal changes, that would not necessarily be publicly notified. But more significant changes are publicly notified.[399]

6.39 When inquiring as to how this public notification process occurred, the Estimates Committee were informed that:

> The general answer is that the *Planning and Development Act* allows discretion to the planning authority to undertake renotification of an amendment application. Generally our test would be whether anybody who made a representation, or anybody else, would be detrimentally affected by what is proposed. That would be the first test.
>
> The second test could relate to the extent of the changes; whether the change is so significant that it warrants that further notification process. If it is internal arrangements, most of the time we would probably not renotify that. If it is minor changes to things like building materials or finishes, we probably will not notify. But if it

[395] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 13.

[396] See for example, Gregory Lloyd, *Submission 26;* Combined Community Councils of the ACT, *Submission 21;* Campbell Community Association, *Submission 18*; Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 8.

[397] Angela McGrath, *Submission 36*, p. 2.

[398] Gregory Lloyd, *Submission 26.*

[399] Mr Ponton, *Transcript of Evidence*, 26 June 2019, p. 889.

> impacts things like access, solar access for an adjoining neighbour or the interface with a neighbour, we are more likely to notify.
>
> We also look at what was initially said and the original consideration of the act. We look at two things there: the number of representations or the actual representations received—not necessarily a quantum—to see what they were and what the issues were to inform us of whether this is something that is important to renotify. Then the other aspect is to look at entity advice received, whether that will change the substance of what we have approved initially.[400]

6.40 Further to this, the Estimates Committee also asked about how much discretion there is in relation to whether an amendment to a development application is renotified or not. The Directorate indicated that:

> The legislation allows that discretion and there are standard operating procedures in place for the development assessment team for a range of our activities. We would go back to the original decision to see whether this was a point of contention for the original decisions. That is a fairly clear indicator that you would want to renotify if we had submissions dealing with that issue. Particularly if our assessment team had identified it themselves as an issue, not through public notification, we would probably want to renotify.[401]
>
> We go through a range of considerations to understand whether somebody might be materially impacted. We have a range of professionals who apply their professional judgement, and that is what we expect of them.[402]

COMMITTEE COMMENT

6.41 The Committee notes that the *Planning and Development Act* 2007 provides three main ways a DA can be significantly changed following public notification: amendment (section 144), further information (section 141) and corrections (section 143). It is clear that people submitting evidence were not always aware of this differentiation, and therefore there may be a disjoint between community evidence and Directorate evidence on this matter.

6.42 Only one of these three ways, amendment, allows for further public notification, and that is at the Planning Authority's discretion. However, each of these avenues can lead to changes that the community may consider to be significant. Further, the test for renotification (section 146) following amendments is not clear on a critical issue – design changes that alter the appearance of the development from a public area.

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[400] Mr Cilliers, *Proof Transcript of Evidence*, 26 June 2019, p. 890.
[401] Mr Ponton, *Proof Transcript of Evidence*, 26 June 2019, p. 891
[402] Mr Ponton, *Proof Transcript of Evidence*, 26 June 2019, p. 891.

Recommendation 15

6.43 The Committee recommends that the *Planning and Development Act* 2007 is amended to clarify the test for when amended Development Applications must be renotified to the community, particularly in cases where design changes alter the appearance of the development from public areas.

Recommendation 16

6.44 The Committee recommends that the *Planning and Development Act* 2007 is amended to provide for re-notification of a development where further information or corrections significantly alter the proposal.

DA DECISIONS – ADEQUACY AND ACCESSIBILITY

6.45 In his submission John Edquist referred to a repot drafted by the Auditor General in 2014[403] which noted that there is 'inadequate documentation of the assessments made by Directorate assessing officers.'[404]

6.46 This view was shared by the National Trust who told the Committee that 'public information of DA outcome and reasons is lacking'[405] whilst the KBRG noted instances where those who had put in representations were not notified of the outcome of a DA decision.[406]

6.47 Weston Creek Community Council indicated that in their experience, following the approval of DAs with conditions and variations, nothing more is communicated about the status of the DA or what the final outcome is once the requested changes are made.[407]

6.48 This viewpoint was supported by the Australian Institute of Architects (AIA) who told the Committee that:

> The current DA assessment process does not allow an objector to see how their concerns have been responded to. There is no mechanism to inform the objector of the outcome of their objection. The only available pathway is the ACAT appeal process, which is not an appropriate process for objector feedback.[408]

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[403] ACT Auditor Generals Performance Audit Report : Single Dwelling Development Assessments (Report No 3 of 2014), p. 3, https://www.audit.act.gov.au/__data/assets/pdf_file/0006/1179906/Report-No-3-of-2014-Single-Dwelling-Development-Assessments.pdf, Accessed 10 February 2020.

[404] John Edquist, *Submission 43*, p. 2.

[405] National Trust of Australia (ACT), *Submission 23,* p. 1.

[406] Kingston and Barton Residents Group, *Submission 39*, p. 2.

[407] Weston Creek Community Council, *Submission 46*, p. 3.

[408] Mr Leeson, *Transcript of Evidence*, 10 September 2018, p. 43.

6.49 A number of local residents and community groups suggested that when a decision is published in relation to a DA that additional information is included with that decision, and that the decision and the reasons for the decision are published. Additional information suggested included:

- the assessing officers name;[409]
- the assessing officers assessment of the DA and reasons for decision against every applicable rule or criterion provision, as well as the deliberations behind them;[410]
- the assessing officer's reasons/evidence as to why he or she believed that the DA either complied with, or did not comply with, each identified rule or applicable criteria;[411]
- the inclusion of a brief note indicating the assessing officer's understanding of subjective terms such as "reasonable", "minor", etc, together with the provision of relevant examples, demonstrating that the interpretation being given to the term was not unusual or idiosyncratic; [412]
- the final approved development outcomes along with decisions and caveats;[413] and
- the requirement for assessors to respond, albeit briefly to every objection lodged;[414]

6.50 The Property Council noted that the lack of adequate explanations for decisions was possibly leading to more appeals:

> …what is often missing is the decision-maker talking to both sides and explaining their reasons for the decision. I think that is missing somewhat in this process and sometimes leads to either an applicant or the community not feeling satisfied that their concerns were actually heard, whereas they likely were heard but are not in the considerations that were put forward in the four or five-page document that supports a DA or the reasons for decision. It might help to have a design review panel or some sort of information panel, particularly if it is a more complex project where the decision is probably more final, unless there has been an error of law, that gives the community the ability to be heard or to talk and for both sides to present their responses in that forum. There could be an advantage in that.[415]

6.51 The Directorate sought to clarify the availability of DA assessment documentation and in an Answer to a Question on Notice, indicated that:

[409] Inner South Canberra Community Council, *Submission 44*, p. 3; John Edquist, *Submission 43*, pp. 2-3.

[410] Mr Stanton, *Transcript of Evidence*, 10 September 2018, p. 96; Inner South Canberra Community Council, *Submission 44*, p. 3; John Edquist, *Submission 43*, pp. 2-3.

[411] Inner South Canberra Community Council, *Submission 44*, p. 3; John Edquist, *Submission 43*, pp. 2-3.

[412] Inner South Canberra Community Council, *Submission 44*, p. 3; John Edquist, *Submission 43*, pp. 2-3.

[413] Gregory Lloyd, *Submission 26.*

[414] John Edquist, *Submission 43*, p. 3.

[415] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 31.

> Assessment/evaluation documents in relation to Development Applications (DAs) are released to the public only when an application is made to the planning and land authority under the Freedom of Information Act 2016. Further, when an application for review of a DA decision is lodged with the ACT Civil and Administrative Tribunal, the planning and land authority is required to prepare T-documents containing all documents relating to a particular DA. The T-documents also include internal assessment documents and the T-documents are available to all parties joined to the appeal.[416]

6.52 From an industry perspective the PIA noted that the structure of the Notice of Decision (NOD) issued for DAs needs more clarity in terms of the 'conditions needing to be satisfied prior to release of stamped plans.'[417] Their submission indicated that:

> The NOD rarely mentions the need for release of stamped plans prior to the proponent being able to secure Building Approval and commence construction works. The NODs can include lengthy conditions and are unclear on what is required to finalise approval.[418]

6.53 There is industry concern that, at times, conditions are added to permits that do not align with project objectives, nor Government policies. Subjective comments and conditions being added into permits is not a supported approach, and there needs to be clear education and alignment of all officers in all agencies that have responsibility for responding to DA's.[419]

6.54 The Property Council also noted that there needed to be 'improvements' to how DA approval conditions are communicated and applied. They presented a range of concerns and possible solutions in their submission:

- Standard conditions from the relevant authorities often do not reflect the different complexities or requirements of the individual development application aspects. The applicant is then required to resolve directly with the referring authority to resolve. Planning officers should be provided with sufficient ability to refuse or revise to reflect the context.
- There is a need for consistency of development conditions to provide certainty for both the applicants as well as the wider Canberra community. There was feedback that the range of conditions can often vary between different projects and can include conditions on matters that are actually not required to be resolved at the development application or a requirement of the Territory Plan.
- In some situations, DA Conditions are required to be satisfied before the building approval takes effect. These can sometimes be unclear and may be improved by clearly specifying

[416] *Answer to Question on Notice No 11,* answered 4 October 2018.
[417] Planning Institute of Australia, *Submission 29*, p. 11.
[418] Planning Institute of Australia, *Submission 29*, p. 11.
[419] Property Council of Australia, *Submission 49*, p. 6.

these. However, these conditions can often be as result of closing out a referral agency comment that should have been undertaken in the referral. This often results in further delays and uncertainty.

- ACTPLA officers need to be empowered and provided with the flexibility and skills to negotiate and make decisions that align the development objectives and Government Policy. At times, this may involve over-riding agency comments, and officers need to feel supported in doing this. Alignment with objectives and outcomes of projects need to be paramount.
- Whilst it is acknowledged that there should be a level of flexibility, this can essentially restart the clock for the referral agencies and reduce the ability of the EPSDD to determine applicability and drive the timeframes. As a result, this approach can cause significant delays in resolving the conditions, ultimately delaying the overall project.
- As a DA Condition can not result in a substantial change, there has been some concern that relatively minor conditions can restrict the commencement of development unnecessarily and consideration should be given to allowing stages of development such as early works, demolition and excavation to commence where not affected by the conditions. This can align with building approval process and will not necessarily result in unapproved or redundant works being undertaken.[420]

COMMITTEE COMMENT

6.55 The Committee addresses the issue of the availability of decisions in recommendations in Chapter 6.

Recommendation 17

6.56 The Committee recommends that the Directorate conduct a review of the structure of the Notice of Decision and the way conditions on approvals are communicated and applied.

IMPROVING ACCESSIBILITY

GUIDANCE MATERIAL

6.57 Whilst there was general consensus from community and industry groups that greater education of the DA process and its requirements is needed,[421] it was also suggested that:

[420] Property Council of Australia, *Submission 49*, pp. 5-6.
[421] Friends of Hawker Village, *Submission 11,* p. 2.

> To facilitate engagement, a simple guide to the planning system should be readily available to residents.[422]

6.58 Weston Creek Community Council supported this concept and stated that residents:

> …are usually thrown in at the deep end when there is a notification of a proposed development nearby and they don't know where to start let alone how to go about it. We need a '*Development Application 101 booklet for Dummies'* to help the community when they are in this situation.[423]

6.59 Comparatively it was noted by the EDO that the Victorian website provided guidance material to assist users of the planning system 'in the form of planning practice and advisory notes.'[424]

6.60 The 'Development applications and assessment' page on the EPSDD website lists a number of webpage links to further information and resources. [425] The EPSDD lists the 'Building approval information pack' and the 'Development Application information pack'. These link through to webpages that provide the relevant information required to support landowners who require information about building approvals and development applications.

COMMITTEE COMMENT

6.61 This report touches on community and applicant understanding of the planning process in numerous places, including sections on notices of decisions, heritage and planning compliance complaints. Recommendations on suggested information materials for the community on all of these topics are consolidated in this chapter.

6.62 The Committee notes the current suite of information materials for applicants (i.e. the 'Development Application information pack') which is referred to on the Directorate website, but is of the view that this is not meeting the needs of the broader community.

6.63 Firstly, the Committee notes it assumes knowledge that is likely to be common amongst applicants but is not common in the broader community. It therefore likely to be beyond the level of technical capability of many members of the public.

6.64 Secondly, the Committee is of the view that the information is not located on the website in a way that makes it obvious or easily accessible for members of the community.

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[422] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 1.

[423] Weston Creek Community Council, *Submission 46*, p. 1.

[424] Environmental Defenders' Office, *Submission 58*, p. 3.

[425] Environment, Planning and Sustainable Development Directorate – Planning, 'Development Applications,' https://www.planning.act.gov.au/development_applications. Accessed 10 February 2020.

6.65 Thirdly, the Committee asserts that the information addresses the planning process from the point of view of an applicant, not a community member engaging in processes such as public notification.

6.66 The Committee believes that fixing these issues would be a relatively simple, low-cost exercise that would be of significant assistance to the community. Having pre-prepared materials to pass on to customers would also help Directorate staff when assisting both applicants and members of the community.

Recommendation 18

6.67 The Committee recommends that the Directorate develop a suite of 'How To' fact sheets for the community and proponents on common topics that come up when interacting with the Development Application process.

Recommendation 19

6.68 The Committee recommends that the Directorate develops 'How To' fact sheets for reviewing and commenting on development applications, including guidance on key documents community members should access in an application and what needs to be contained in any comment on an application. A link to relevant fact sheets should be included with each Development Application on the website and on the Development Application Finder App.

Recommendation 20

6.69 The Committee recommends that the Directorate develop a fact sheet that provides a glossary of key planning terms, and include a link to it with each Development Application on the website and on the Development Application Finder App.

Recommendation 21

6.70 The Committee recommends that the Directorate develop a fact sheet that provides provide guidance to the community and applicants on key features of the Territory Plan, such as the interaction between rules, criteria and objectives. A link to the fact sheet should be included with each Development Application on the website and on the Development Application Finder App.

Recommendation 22

6.71 The Committee recommends that the Directorate develop a 'How To' fact sheet for interpreting Notices of Decision and provide a link to it with each Notice of Decision.

Recommendation 23

6.72 The Committee recommends that the Directorate develop a fact sheet that provides guidance for community members and groups in relation to appealing a decision on a Development Application and provide a link to it with each Notice of Decision.

Recommendation 24

6.73 The Committee recommends that the Directorate develop a fact sheet that provides guidance for community members about the interaction between heritage matters and Development Applications, and provide a link to it with each Development Application on the website and on the Development Application Finder App.

Recommendation 25

6.74 The Committee recommends that the Directorate develop a fact sheet on the planning compliance complaint process, and provide a link to it on the Directorate website, on the Access Canberra complaint form, in the Development Application Finder App and when a complaint is received.

ADDITIONAL INFORMATION

6.75 It was suggested that to improve understanding of DAs that have been lodged that there needs to be more detailed responses to rules and criteria presented by applicants in their DA documentation. Additionally many advocated for a response to be given by applicants for all rules and criteria.

6.76 The KBRG also noted that 'the applicant's required "Statement Against Criteria" can be helpful (if done well) but cannot always be relied on.[426] Friends of Hawker Village noted that this was because of a lack of detail and advocated that:

> the full list of rules and criteria should be required and, when the proponent relies on criteria, the single word 'complies' (or similar) is not acceptable.[427]

6.77 Ms Gingell, on behalf of Friends of Hawker Village, told the Committee

[426] Kingston and Barton Residents Group, *Submission 39*, p. 1.
[427] Friends of Hawker Village, *Submission 11*, p. 3.

> We believe a standard format should be enforced whereby all rules/criteria must be addressed, stating whether the applicants assert compliance with the rule or are interrelying on criteria. If relying on criteria, a clear statement of how that compliance is achieved should be required. [428]

6.78 It was also suggested that DAs:

- should be required to contain a copy of the relevant Lease(s) and any approved variations. This material should include the terms on which the lease was granted, any variation to those terms, including any concessions given initially or subsequently;[429]
- should include information about the developers undertaking the projects as well as contact details for the builders;[430]
- should include the objective or purpose of the proposal as well as the changes that will achieve the objective;[431]
- include how the required analysis by developers of solar access, wind, noise, traffic movement, parking, pedestrian safety and visual impact issues are to be conducted and what the data quality requirements are;'[432]
- include statements by developers on how their proposal will minimise disruption to business continuity and services;[433]
- include shadow diagrams for multiple times of the year, not just the winter solstice, and throughout the whole day, from dawn to dusk;[434] and
- include a list of the rules that have been broken in order to put a development forward would help.[435]

6.79 Whilst the Planning Institute of Australia (PIA) indicated that the information available to the community 'is similar to that of other jurisdictions' they indicated that they would:

> …support additional information being made available on the EPSDD Website and/or DA Finder App, such as Notices of Decision, DA amendments etc, provided this does not divert staff and resources from the time allocated to DA Assessment.[436]

PROVISION OF A DA SUMMARY PAGE

6.80 The suggestion of a DA summary page received great support from community groups.

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[428] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.
[429] Dr Klovdahl, Submission 61, p. 1.
[430] Campbell Community Association, *Submission 18*, p. 2.
[431] Woden Valley Community Council, *Submission 54*, p. 5.
[432] Ivan Johnstone, *Submission 4*, p. 3.
[433] Ivan Johnstone, *Submission 4*, p. 3.
[434] Red Hill Regenerators, *Submission 10*, p. 5.
[435] Mr Stanton, *Transcript of Evidence*, 13 September 2018, p. 109.
[436] Planning Institute of Australia, *Submission 29*, p. 3.

6.81 The Woden Valley Community Council noted that:

> To have a clear description of what the development is, what the objective of it is and what the benefits of it are, if we could have that in half a page or a page, then that might help move on and save some time.[437]

6.82 The EDO made reference to the Victorian Environment, Land, Water and Planning website which provides a google map of the area to be developed, the comment period in relation to the timeline of the entire project, a document library and an opportunity to make submissions.' It also 'sets out a summary of each proposal.'[438]

6.83 The EDO gave the example of the Victorian planning website which has 'key proposals summarised in a short information factsheet' which can include:

- A short description of the site, including a map;
- Key dates clearly displayed in a table;
- An outline of the proposed changes; and
- Information about where to view the proposal and about the planning process (including the role of Government Land Standing Advisory Committee generally).[439]

6.84 The EDO suggested that the following should be included in a summary sheet for ACT DAs:

- The background of each project, as described by the Planning and Land Authority, rather than the applicant;
- The relevant stage of the DA process the project is at;
- Any relevant consultation, scoping and Environmental Impact Statement requirements to be fulfilled;
- A map of the development area.[440]

6.85 In this context the Hughes Residents Association suggested that all DAs:

> …should be required to show, prominently on the first page, and in a set format, the proposed building footprint, plot ratio, solar envelopes, set-backs, proposed removal of trees and loss of native woodland or grassland, with a plan illustrating changes compared to the existing layout, and any other matters potentially reducing green space, solar access, tree cover, the natural environment and the amenity of neighbouring residents.[441]

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[437] Ms Carrick, *Transcript of Evidence*, 13 September 2018, p. 108.
[438] Environmental Defenders' Office, *Submission 58*, p. 7.
[439] Environmental Defenders' Office, *Submission 58*, p. 3.
[440] Environmental Defenders' Office, *Submission 58*, p. 3.
[441] Hughes Residents Association, *Submission 40*, p. 3.

6.86 The Inner South Canberra Community Council (ISCCC) advocated for a form or summary sheet that was set out in a hierarchical manner with the most important things at the top:

> It would start, in my view, with heritage, because that is the highest protected and upheld, beside the Territory Plan, then the zoning of the particular proposal and what is allowed under the Territory Plan under that zoning…and then, after that, all the particulars of the application—the simple ones, footprint, height, open space, mixed use, all those sorts of things—so that that is all out there, available on the web through some sort of reference to ACTPLA and being supplied by the developer.[442]

INFORMATION SUPPLIED IN PLAIN LANGUAGE

6.87 The EDO noted that there appears to be more information on DA processes for applicants than the general public on the EPSDD website and indicated in their submission that:

> The website is primarily directed to applicants in the DA process, with very little information for all users of the DA process. Plain language information is required that sets out general information on the DA process and identification of opportunities to comment at each stage.[443]

6.88 The suggestion that DA information is provided in plain English received support from community groups.[444]

6.89 As an example of 'plain language information' in the planning sphere, the EDO made reference to the Victorian Department of Environment, Land, Water and Planning website which has a 'Guide to Victoria's Planning System' that is aimed at 'professional planners, local council and referral authority officers, councillors, students, people applying for a planning permit, and people who may be affected by a planning proposal'[445] and:

> sets out, in some detail, the planning scheme, amendments, planning permits, other procedures, reviews, acquisitions and compensation, enforcement, agreements and plain English…[446]

6.90 The MBA noted that there was 'merit' in looking at a 'plain English statement' although cautioned that the length of a DA, sometimes hundreds of pages, could be 'difficult' to turn into a one page document. They noted that 'there could be arguments about what is included in that summary and what is not included.'[447]

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[442] Ms Forrest, *Transcript of Evidence*, 13 September 2018, p. 109.

[443] Environmental Defenders' Office, *Submission 58*, p. 3.

[444] See for example, Friends of Hawker Village, *Submission 11*; Kingston and Barton Residents Group, *Submission 39*; Campbell Community Association, *Submission 18*; Combined Community Councils of the ACT, *Submission 21*; Gungahlin Community Council, Submission 22.

[445] Environmental Defenders' Office, *Submission 58*, p. 3.

[446] Environmental Defenders' Office, *Submission 58*, p. 3.

[447] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 36.

6.91 The Committee questioned whether an overhaul of the EPSDD website and planning guidance information to facilitate the provision of information in plain English was possible. The Directorate indicated that:

> …my initial response to that question is that much of what we need is technical information. By its very nature for the layperson it is not necessarily going to be easy to understand. We try to have some of the documentation—the site plan, the elevations, the floorplans—easily consumable, but there is a need for more technical information.
>
> Providing a document that simplifies applications is certainly something we could look at, but the information is there because as professionals we need it to make a proper assessment.[448]

ADOPTION OF CONSISTENT NAMING CONVENTIONS

6.92 The Woden Valley Community Council made reference to the fact that 'there is often a very large number of documents to open and work through.'[449]

6.93 The EDO acknowledged this, also noting that documents lodged as part of a DA are difficult to follow as they 'are often not labelled in a logical manner'[450] and there is often no obvious correlation between the document submitted and the criteria it seeks to address.':

> For large applications involving multiple blocks for example, it can be unclear as to what development will occur on which block, which documents refer to what impacts on which areas etc. Information is simply unclear.[451]

6.94 To combat this the EDO suggested that documents lodged as part of a DA (or an EIS or EIS exemption process) follow set numbering and naming processes:

- Logical ordering of documents;
- Naming of documents following particular naming ordering convention; and
- Completion of a checklist or other such document that identifies the criteria that needs to be addressed, and the supporting documentation that relates.[452]

6.95 Whilst supporting the need for clarity the PIA also suggested that the 'e-Development system should be more flexible in regard to updated naming conventions, particularly for Civil

[448] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 159.
[449] Woden Valley Community Council, *Submission 54*, p. 5.
[450] Environmental Defenders' Office, *Submission 58*, p. 6.
[451] Environmental Defenders' Office, *Submission 58*, p. 6.
[452] Environmental Defenders' Office, *Submission 58*, p. 6.

Engineering plans and other 'non-standard' plans as it is a major exercise to rename all technical drawings to meet naming conventions.'[453]

6.96 When discussing the naming convention of files on DAs, the Committee raised the lack of clarity and clear differentiation of documents provided, highlighting the fact that in a single DA a number of different documents could be called the same thing. The Directorate stated that

> there is a naming convention, but if it is complicated I am happy to revisit that. It is something I have not looked at for probably 10 years or so.[454]

Recommendation 26

6.97 The Committee recommends that the naming convention for files submitted and contained within Development Applications be reviewed to give members of the public a clearer understanding of what each file contains.

LONG-TERM ACCESSIBILITY OF DEVELOPMENT APPLICATIONS AND DECISIONS IN RELATION TO DEVELOPMENT APPLICATIONS

6.98 The evidence provided to the Committee suggested that it was a common view that access to documentation and information related to DAs and DA decisions needs to be improved not only in terms of access in the short term but also in terms of access for the long term It was also imparted to the Committee that the documents retained should be readable and downloadable.[455]

6.99 Dr Klovdahl recommended that:

> Material related to Development Applications should be archived [except in relation to some buildings (e.g., A.C.T., Federal Government, foreign government buildings such as embassies, critical infrastructure buildings) where security concerns might be an issue (e.g. the Australian Tax Office, Telstra)]. Archived DA materials should be made available via an ACTPLA DA page in most cases; in others, the material should be available on request, for no charge or minimal charge…The aim would be to have a

[453] Planning Institute of Australia, *Submission 29*, p. 7.

[454] Mr Ponton *Transcript of Evidence*, 13 September 2018, pp. 158-159.

[455] See for example, Gregory Lloyd, *Submission 26;* Woden Valley Community Council, *Submission 54;* Chris Erett, *Submission 53*; Campbell Community Association, *Submission 18*; Kingston and Barton Residents Group, *Submission 39*; Angela McGrath, *Submission 36*; National Trust of Australia (ACT, *Submission 23*; Property Council of Australia, *Submission 49*.

> great deal of access to archival DAs, including in a timely manner during construction and amendment phases.[456]

6.100 Mr Temple noted in his submission that there was also an issue in accessing representations:

> As soon as the DA closes the Developer is able to access all representations. Representors have to wait. They are eventually available digitally on the ACTPLA website but not in hard form. It is disappointing that these huge files are removed (too large to download on a home computer or smart phone!) from the "work" space before the results of the DA (and possibly an ACAT challenge) are made public. We request that Representations be available to the public until the DA is finalised.[457]

6.101 Ms Gingell, on behalf of Friends of Hawker Village, told the Committee that

> We would find it extremely useful to have access to DA documentation for a time period after a notice of decision has been issued. It would also be useful for those who have made a submission to have access upon request to the T documents, the DA file, as soon as the notice of decision is issued. These documents are currently only available to parties after an ACAT review commences.[458]

6.102 The Gungahlin Community Council noted in their submission that:

> The lack of readily available information on historical DAs and applicable decisions is an ongoing frustration for the GCC. The committee has been unable to access this type of information on numerous occasions despite legitimate business reasons to do so, including:
>
> • To check whether the final build matches approved DA plans and conditions;
>
> • To answer questions subsequently raised by the community; and
>
> • To provide context to other DAs by reviewing approved plans for nearby developments not yet built.[459]

6.103 Weston Creek Community Council indicated that when they have wanted to check on what was being proposed for a site they 'were unable to source documents as the application process was closed and the documents were no longer available.' The made particular reference to the fact that this included DAs that the Council had actually commented on.[460]

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[456] Dr Klovdahl, Submission 61, p. 2.
[457] Mr Temple, *Submission 28*, p. 5.
[458] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.
[459] Gungahlin Community Council, *Submission 22*, p. 2.
[460] Weston Creek Community Council, *Submission 46,* p. 2.

6.104 Chris Erett also noted that with the documents being unavailable that 'following the completion of a development, there is at present no simple means for members of the public to check if its construction complies with what was approved.'[461] He suggested that:

> A copy of all approved DA's should be publicly available, in an online archive, in perpetuity. This should be accompanied by a building certification report noting compliance with the approved plans and any conditions that were imposed on the development. Issues with the quality and integrity of the development may arise many years after construction.[462]

6.105 He also noted that 'it can be difficult to determine which entities were responsible for the various aspects of design and building, and who should be held accountable for the quality of their work' and suggested that 'a register of buildings should be established that provides information on the: developer, architect, engineer, builder and the approving planning officer.'[463]

6.106 The Property Council agreed that access to reasons for DA approvals and rejections 'would provide for informed design of projects on nearby or adjoining lands, and as a general education for all stakeholders in respect of rationale supporting an approval or refusal.'[464]

6.107 Friends of Hawker Village noted that access to this information should not be difficult:

> Given the information has already been tailored for display online in the initial notification, it would be most helpful if this information plus the Notice of Decision could be stored online for easy access for a reasonable period of time after completion of the project. A ten-year online retention period should provide adequate opportunity to cover any concerns that might arise after construction.[465]

6.108 When referring to Minister Gentleman's opening statement the Committee asked about ongoing access to DAs online. The Directorate confirmed that all decisions and reasons for decisions are publicly available, but that they are not on the website. They also confirmed their intention to ensure Notices of Decisions (NODs) are available online. [466]

Recommendation 27

[461] Chris Erett*, Submission 53.*
[462] Chris Erett*, Submission 53.*
[463] Chris Erett*, Submission 53.*
[464] Property Council of Australia, *Submission 49*, p. 5.
[465] Friends of Hawker Village, *Submission 11*, p. 3.
[466] *Transcript of Evidence*, 13 September 2018, p. 156.

6.109 The Committee recommends that public notification documents are kept publicly available on the Directorate website, the ACTMAPi 'Development' tab and on the Development Application Finder App for a period of five years after the date of public notification.

Recommendation 28

6.110 The Committee recommends that Approved Plans and Notices of Decision are kept publicly available on the Directorate website, the ACTMAPi 'Development' tab and on the Development Application Finder App for a period of five years after the date of the Notice of Decision.

Recommendation 29

6.111 The Committee recommends that deidentified representations are made available to all parties to the Development Application process, including objectors and the wider community, following the end of the notification period.

7 DEVELOPMENT LODGEMENT AND ASSESSMENT

THE CURRENT TRACK SYSTEM

7.1 As discussed in Chapter 3, the ACT has a track-based system for assessing developments that require approval - Code Track, Merit Track and Impact Track.

7.2 In line with the opinion of many community groups and individuals, the Planning Institute of Australia (PIA) 'Government workshop' told the Committee that the 'current track assessment system wasn't understood by the community and therefore wasn't working for the community' and that it 'resulted in a tendency for applicants to meet minimum requirements with no aspiration/incentive to exceed requirements.'[467]

7.3 It was accepted that 'there were 'blurred lines' between the Code, Merit, Impact tracks' however it was also noted when compared 'the changes in the actual process was quite significant.'[468] The PIA 'Planners workshop' noted that there was increased confusion about tracks when 'proponents securing EIS exemptions, or Environment Significance Opinions, prior to DA lodgement allowed the track to be changed...'[469]

INCORRECT TRACKS

7.4 The *Planning and Development Act* 2007 requires that the applicant determine the appropriate assessment track, prior to lodgement of the DA. Once the application has been lodged in a particular track it must meet the requirements for that track or be refused.

7.5 In their submission the Environmental Defenders' Office (EDO) noted that there are a number of assumptions made by the Authority which can cause confusion and mistakes. They indicated that the Planning and Land Authority relies on the applicant to know, understand and correctly apply the law, including which track the development should be lodged in. Such a process assumes the following:

- Applicants have a good understanding of each track and can thereby make an assessment as to which track applies in their case;
- Applicants that do not have an understanding of each track and are unsure as to which track to lodge their application in will contact the Planning and Land Authority for guidance;

[467] Planning Institute of Australia, *Submission 29*, p. 5.
[468] Planning Institute of Australia, *Submission 29*, p. 6.
[469] Planning Institute of Australia, *Submission 29*, p. 6.

- Applicants are aware of environmental values located on the land that they wish to develop. This is not necessarily the case;
- Applicants act in good faith in the protection of the environment, even to their own detriment.[470]

7.6 Ms Cully on behalf of the Hughes Residents Association, also noted that the submission of incorrect or incomplete information by a developer can 'evade proper public scrutiny' by having their development proceed along the wrong track.[471]

> For example, a development that is wrongly presented as code track does not even trigger the merit track requirements of notification of neighbours. Next level up, a development which should be impact track, if through an inaccurate environmental statement is slotted into merit track…[472]

7.7 The Hughes Residents Association commented on the frustration they have experienced developments that should be lodged in the impact track that have been lodged in the merit track:

> The current DA assessment track system is opaque and difficult to challenge. For example the current DA for Section 66 Deakin was placed on the Merit Track, rather than Impact Track, based on a manifestly incorrect Environmental Assessment.[473]

7.8 The EDO told the Committee that they have worked with a number of clients who have experienced the same issue[474] and proposed that:

> An assessment of the correct track must form part of the initial assessment of every DA. The Planning and Land Authority and all other relevant "referring entities" need to be appropriately resourced to assess the risk of a development, and be trained to take into account all relevant considerations when deciding whether a DA has been lodged in the correct track.[475]

Recommendation 30

7.9 The Committee recommends that the Directorate undertake a 'track check' as part of every completeness check or pre-assessment process to ensure Development Applications are lodged in the correct track.

[470] Environmental Defenders' Office, *Submission 58*, p. 11.
[471] Ms Cully, *Transcript of Evidence*, 10 September 2018, p. 10.
[472] Ms Cully, *Transcript of Evidence*, 10 September 2018, p. 10.
[473] Hughes Resident's Association, *Submission 40*, p. 6.
[474] Environmental Defenders' Office, *Submission 58*, p. 11.
[475] Environmental Defenders' Office, *Submission 58*, p. 12.

Recommendation 31

7.10 The Committee recommends that if information is provided following the notification period that changes the assessment track, the assessment process should start again from the completeness check stage and public notification should be re-conducted.

TRIGGERS FOR AN IMPACT TRACK ASSESSMENT

7.11 The Red Hill Regenerators noted that:

> Schedule 4 of the *Planning and Development Act* contains no triggers relating to level of community interest in a proposal as to whether a development should be considered under the merit or impact track.[476]

7.12 It was suggested to the Committee that:

> A high level of community concern about a proposal, as demonstrated for example by submissions from community organisations or from a large number of individuals, or previous representations or community actions, should trigger an Impact Track Assessment.[477]

7.13 It was also suggested that from an environmental perspective there is a need to take a 'precautionary approach to the assessment of development applications and possible harm to the environment.'[478]

7.14 The EDO referred to the principles in section 6, section 9(1)(a) and section 9(2)[479] of the *Planning and Development Act* 2007 and suggested that where the 'impacts of a development are uncertain, a DA must be lodged in the impact track to ensure an independent EIS is undertaken to provide certainty on the impacts of a development.'[480]

Recommendation 32

7.15 The Committee recommends that Development Applications where the environmental impact cannot yet be determined but where there is a reasonable possibility that the impact, once assessed, would require it to be assessed in the Impact Track, should be assessed in the Impact Track.

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[476] Red Hill Regenerators, *Submission 10*, p. 3.
[477] Hughes Resident's Association, *Submission 40*, p. 6.
[478] Environmental Defenders' Office, *Submission 58*, p. 11.
[479] *Planning and Development Act* 2007, section 6; section 9(1)(a); section 9(2).
[480] Environmental Defenders' Office, *Submission 58*, p. 11.

UNDERUTILISATION OF CODE TRACK

7.16 Both the PIA and The Property Council suggested that certain developments could move from Merit Track to Code Track and would 'still be subject to assessment' but it would make the approval process would be more 'streamlined.'[481]

7.17 The Property Council affirmed that the Territory Plan and development assessment framework (DAF) 'definitely has the structure in place to allow' such an approach.[482] They indicated that:

> If you were to look at what an improvement could be, it could be that there would be more development applications in code track that seem to comply with a set of minimum criteria deemed to satisfy provisions, and then you could merit track their use for those where there might seem to be a criterion assessment or a merit assessment against that criterion, which is more in line with, I believe, what the intent of the framework was in the first instance.[483]

7.18 The PIA agreed that the system was designed with the intent 'that a whole range of development proposals could fall into that code track and just be subject to a simplified assessment, limited if any public notification and the like and therefore a quicker time frame.'[484] However the Committee was told that:

> I think where that falls down is that in the development tables under each zone there is minimal and sometimes nothing in the code track listed automatically. Dwelling houses in a residential zone come to mind. Therefore, a whole raft of minor development proposals that have no real planning merit or planning consideration are now in the merit track and subject to a broader level of assessment and community consultation and the like. That potentially increases expectations from the community about these minor activities.[485]
>
> To me, it adds to the confusion when a development is being advertised for a basic development proposal at the same time as a 20-storey mixed-use development of many hundreds of units. From the community's point of view they are being subjected to the same level of analysis and professional assistance.[486]

7.19 The Property Council acknowledged that there would need to be a 'widening of the Merit Track whereby to enable consideration of proposals in Code Track that require a departure from a criterion but where the intent of the criterion is still met.'[487]

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[481] Property Council of Australia, *Submission 49*, p. 7; Planning Institute of Australia, *Submission 29*, p. 6.
[482] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 26.
[483] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 26.
[484] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, pp. 58-59.
[485] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, pp. 58-59.
[486] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, pp. 58-59.
[487] Property Council of Australia, *Submission 49*, p. 7.

7.20 They asserted that:

> where the relevant authority is satisfied that a proposal conforms fully with the intent of the criterion, will not cause any significant adverse environmental impacts and achieves high standards of architectural and urban design, it may approve a minor departure from the Criterion. This would have the benefit of reducing the volume of Merit track DA's and recognised development assessment efficiency where a project is compliant.[488]

7.21 The PIA noted that the code track could be managed like in NSW:

> They have a system of complying development where there is, again, a whole range of categories of developments but basically there is an easier process if you are simply complying. And it is not just for single-dwelling houses; it is a range of other developments as well.[489]
>
> To try to capture developments they think are reasonable in certain areas New South Wales have expanded compliant development. But that reduces the extent to which you publicly consult on DAs, so there is a push and pull there.[490]

MERIT TRACK ASSESSMENT PROCESS ISSUES

7.22 In line with concerns expressed by submitters in relation to the Territory Plan code and associated rules and criteria in Chapter 6 and Chapter 11 the Committee was told that the Merit Track was too subjective.[491]

7.23 In his submission to the inquiry, Greg Marks indicated that when participating in the DA community engagement processes he observed that the most significant element that caused confusion and contention and which often resulted in 'drawn out and convoluted community engagement processes' was the unsatisfactory criteria that applied to DA submitted under the merit track.[492]

7.24 Mr Marks indicated that he believed that loopholes in the merit track process have led to the perception that the ACT has become 'a "developers town", rather than [a] city where the views of the community really count.'[493]

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[488] Property Council of Australia, *Submission 49*, pp. 7-8.

[489] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, p. 59.

[490] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, p. 59.

[491] See for example, Woden Valley Community Council, *Submission 54*, p. 5; Greg Marks, *Submission 41*; Combined Community Councils of the ACT, *Submission 21*.

[492] Greg Marks, *Submission 41*, p. 1.

[493] Greg Marks, *Submission 41*, p. 1.

7.25 Citing the proposed Curtin shops development as an example, Mr Marks affirmed that this was because of the 'nature of proposals that get accepted under the merit track'[494] noting that:

> DAs are allowed to be lodged which are quite at odds with existing planning requirements. The community is then forced to engage with a DA process where the DA proposals not only seek to modify planning conditions (which may be reasonable in some circumstances) but which flout them to the extent that the DA is completely at odds with current planning requirements and usually the current community profile[495]

7.26 Mr Stanton, on behalf of the Combined Community Councils of the ACT, also noted that:

> [T]he community is faced with engaging on the way in which criteria are met or not met. That debate, that argument, is open, of course, to influence and conflict of interest and public debate, right up to the political level….What we see in the merit track with criteria is a lack, too, of decisions being made in ways that let the community see that judicial levels of consideration and deliberation have taken place.[496]

7.27 Mr Marks suggested that the merit track option should be removed or amended, such that it raise 'the bar for what is acceptable to be considered a merit track DA' and does not allow proposals that are 'clearly significantly inconsistent with current planning requirements.'[497]

7.28 The Combined Community Councils of the ACT also suggested that applicants with DAs that are to proceed down the merit track:

- should be required to ensure that all setback and other dimensions are clearly indicated in the plans; and
- should be required to explain in detail how a proposal complies with a criterion. [498]

EXEMPT DEVELOPMENTS

7.29 As discussed in Chapter 3, if projects comply with the Planning and Development Regulation 2008, they may not need a development approval. A complete list of developments that are exempt from development approval can be found in Schedule 1 of the Planning and Development Regulation 2008.

7.30 Most jurisdictions in Australia have an exempt category of developments wherein no planning permit or development approval is required.

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[494] Greg Marks, *Submission 41*, p. 1.
[495] Greg Marks, *Submission 41*, p. 1.
[496] Mr Stanton, *Transcript of Evidence*, 13 September 2018, p. 106.
[497] Greg Marks, *Submission 41*, p. 2.
[498] Combined Community Councils of the ACT, *Submission 21*, p. 2.

7.31 In response to a Question on Notice the Directorate informed the Committee that for each of the last three financial years, the number of building approvals relating to exempt developments granted were as follows:[499]

Financial Year	**Building approvals relating to exempt development granted**
2015-16	1467
2016-17	1580
2017-18	1646

7.32 The Directorate further informed the Committee that:

> This figure includes all building approvals that relate to single dwelling houses in new suburbs, single dwellings and extensions in existing suburbs, and the demolition of single dwelling houses in existing suburbs, which are identified as exempt developments. This figure excludes standalone building approvals for structures such as swimming pools, aerials, fences, patios and the like. [500]

7.33 In response to a Question on Notice the Directorate informed the Committee that for each of the last three financial years, the number of building approvals relating to a single dwelling where a development approval was also granted were as follows:[501]

Financial Year	**Building approvals relating to a single dwelling where a development approval was also granted**
2015-16	442
2016-17	436
2017-18	508

[499] *Answer to Question on Notice No 2*, answered 9 October 2018.
[500] *Answer to Question on Notice No 2*, answered 9 October 2018.
[501] *Answer to Question on Notice No 2*, answered 9 October 2018.

7.34 The Directorate further informed the Committee that 'this figure excludes standalone building approvals for structures such as swimming pools, aerials, fences, patios and the like.' [502]

7.35 When asked by the Committee about examples of exempt developments, the Directorate stated that:

> The most significant exempt development would be a single dwelling in a residential zone. There have been suggestions over the past couple of years that they could move into multi-unit development. The government has resisted that because we are hearing that there is still some concern about single dwellings. The government has certainly not given me any direction to explore going beyond single dwellings because there is more work to be done in relation to that aspect.
>
> Other exempt developments are—technically, if you apply the planning and development app to the letter of the law, if you wanted to change the colour of your home you would need a development approval.
>
> Alterations and additions, if they meet certain requirements, would be exempt. For the smaller items, the regulation itself contains the exemption criteria so a garden shed, retaining walls of a certain height…For single dwellings, they need to make reference back to the single dwelling housing code under the Territory Plan. [503]

7.36 The Directorate informed the Committee that until about 2009 single dwelling houses in residential zones used to go through a code application process but as this process was 'straightforward':

> The decision was made to move those from code track to exempt. But somebody still has to make the call and go through and make sure that it meets the minimum rules for a single dwelling.
>
> The decision was made that certifiers could do that because they would be issuing the building approval also. But it is not just building certifiers who can do that. You can also engage a town planner.[504]

7.37 The Kingston and Barton Residents Group (KBRG) noted this change in their submission to the inquiry:

> According to the EPSDD website, very few DAs are now considered under the 'Code' track, as many Code compliant DAs (including for single dwellings) are now able to be Exempted (by private certifiers) or have an "Exemption Declaration" issued by ACTPLA

[502] *Answer to Question on Notice No 2*, answered 9 October 2018.
[503] *Transcript of Evidence*, 13 September 2018, p. 162.
[504] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 161.

> if there are "minor departures" from some Rules (e.g. building envelope, dimensions of required minimum open space).[505]

7.38 In this context the Directorate were asked by the Committee to provide a recent estimate of how much time and money the Government and proponents saved by exempting single dwellings in a residential zone from needing a DA. In an Answer to a Question on Notice the Directorate stated:

> A significant number of developments that require building approval do not require development approval. While the Government does not have a cost or time estimate, having over 4,500 developments across the last three financial years not requiring development approval is a significant saving to Government in assessment and administration resources, and to proponents in terms of preparing applications, hiring consultants and paying associated fees. There is also an opportunity cost saving of being able to commence development sooner. For example, a fully exempt development does not require assessment by the planning and land authority, while an exemption declaration (for minor non-compliances with no impact) assessed by the authority is estimated to save approximately 24 days for proponents compared to the assessment of a standard development application. [506]

7.39 The Committee heard extensive evidence about concerns in relation to knock-down rebuilds and other exempted developments with many suggesting that DAs be mandatory for every knockdown rebuild. Some also suggested that they also be appealable.[507]

7.40 This view was supported by the Inner South Canberra Community Council (ISCCC), the Combined Community Councils of the ACT, the KBRG and the Griffith and Narrabundah Community Association:[508]

> …all knockdowns and rebuilds that are currently DA exempt should be processed through a standard DA, because a knockdown rebuild affects the whole street, not just the neighbours. Right now, with the way the legislation works, it is not essential for the developer to even advise the neighbours of what is being done.[509]

7.41 The ISCCC stated in their submission that plans for knock-down rebuilds are not publicly available without making Freedom of Information (FOI) requests.'[510]

> This is unnecessarily bureaucratic and serves only to cloak in secrecy, matters that should be open to public scrutiny and discussion. There is no reason the DA website

[505] Kingston and Barton Residents Group, *Submission 39*, p. 3.

[506] *Answer to Question on Notice No 2*, answered 9 October 2018.

[507] See for example, Inner South Canberra Community Council, *Submission 44*; John Edquist, *Submission 43*; Jane Goffman, *Submission 27,* p. 1.

[508] Combined Community Councils of the ACT, *Submission 21*, p. 1.

[509] Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 8.

[510] Inner South Canberra Community Council, *Submission 44*, p. 2.

> should not include the plans that would be provided for a normal Development Application so that parameters such as solar access, plot ratio, dimensions of private open space and setbacks can be determined. While certifiers are still able to approve knock-down re-builds, it should be mandatory for the certificates to be made available. These should provide, with full justification – not just ticked boxes – where there is any departure from Rules in the Codes under relevant legislation.[511]

7.42 The KBRG echoed this sentiment stating that 'the community should not have to rely on Freedom of Information requests to find out details of exempt developments.'[512]

7.43 In contrast to community sentiment the Housing Institute Australia (HIA) advocated that:

> The ACT planning approval framework should increase the opportunities for exempt development, acknowledging that providing greater education of the community would also need to occur. If the public had an improved understanding of the DA exempt development process, they may feel less inclined to be concerned at these proposals.[513]

7.44 The Committee asked the Directorate to elaborate and clarify which consultation requirements exist for a single-dwelling house that can potentially be exempt from a DA. The Directorate stated that:

> Exempt DA…requires that you will be notified as part of the exemption itself. There may be a case where we are approached for what we call an exempt declaration, where there is a minor departure. That is certified. They only relate to things like front, side and rear setbacks—envelopes and private open space requirements.
>
> In those cases the certifier or the crown lessee can approach the planning authority and request that we make a declaration that it is actually exempt. The test for that is whether the matter is actually minor and whether anybody else, other than the applicant, is adversely affected by it, and also not increasing the environmental impact of it. Sometimes, as part of that process to get to the second test of somebody adversely affected other than the applicant, we may request or suggest to the proponent that it may be useful to get support from your neighbour who is affected. [514]

7.45 The Directorate further stated that there is not a point in the process for neighbours to raise concerns about exempt developments. The Directorate stated that neighbours receive

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[511] Inner South Canberra Community Council, *Submission 44*, p. 4.
[512] Kingston and Barton Residents Group, *Submission 39*, p. 3.
[513] Housing Institute Australia, *Submission 47*, p. 1.
[514] Mr Cilliers, *Transcript of Evidence*, 13 September 2018, p. 165.

notification that works are going to commence and gives them approximately seven days' notice of work starting. [515]

EXEMPTIONS AND UTILITY INFRASTRUCTURE DAS

7.46 It was noted that the Planning and Development Regulation 2008 allows certain capital works for the 'augmentation of utility infrastructure' to be exempt from requiring a DA.[516] These activities include:

- maintenance of water and sewage services; and
- installation of minor utility infrastructure not more than 2m above natural ground level.[517]

7.47 However, Icon Water noted that:

> Many utility capital works activities are not covered by these exemptions and require DA approval, such as modifications to structures on dam walls, upgrades to treatment systems, demolition of obsolete tanks and renewal of site perimeter fencing to meet security requirements for critical infrastructure and public safety.[518]

7.48 They went on to suggest that the 'development of a 'development without consent' self-assessment approach for water and wastewater infrastructure, similar to the provisions for water utilities and councils in NSW' would be of benefit for Icon Water operations in the ACT.[519]

LEASE VARIATIONS

7.49 As detailed in Chapter 3, to vary a lease means to add, remove or change one or more of its provisions. This requires development approval.

7.50 The variation of a lease can include one or more of the following:

- varying the lease purpose to permit additional/alternative uses;
- varying development rights and obligations where you want, for example, to extend your gross floor area to accommodate future growth;
- subdividing a single block of land into two or more blocks of land;
- consolidating two or more blocks of land into a single block of land; and

[515] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 166.
[516] Planning and Development Regulations 2008, Schedule 1 Part 1.3; Division 1.37; Section 1.103 (1).
[517] Icon Water, *Submission 62*, p. 6.
[518] Icon Water, *Submission 62*, p. 6.
[519] Icon Water, *Submission 62*, p. 6.

- varying other requirements stipulated in the lease, for example, car parking.[520]

7.51 Friends of Hawker Village were concerned about losses to the community through such variations claiming:

> developers purchase leases which have been granted for recreational purposes and then claim that the permitted activity is not financially viable and seek changes to zoning and leases. This means that the community loses the land set aside for recreational purposes.[521]

7.52 The Authority indicates that where a proposal includes design and siting and a lease variation, only one development application is required.[522] However, there was concern that this was not occurring. For example, Friends of Hawker Village noted that there have been instances of consultations being held about lease variations after the development has been approved.[523]

7.53 Dr Denham, on behalf of the Griffith and Narrabundah Community Association, was clear that:

> …development applications for lease variations and the building proposals that go with those variations should be considered together.[524]

Recommendation 33

7.54 The Committee recommends the Directorate consider changing the process for lease variations so that Development Applications for lease variations are required to be submitted together with any Development Application required to implement the lease variation. The Lease Variation Charge would not be payable until the approval of the Development Application.

DEVELOPMENT APPLICATION DOCUMENTATION AND ADVICE

7.55 In their submission to the inquiry, the Australian Housing and Urban Research Institute (AHURI) noted that their research:

[520] Environment, Planning and Sustainable Development Directorate – Planning, 'Crown lease change,' https://www.planning.act.gov.au/leasing-and-titles/varying-crown-leases/crown-change-lease. Accessed 10 February 2020.

[521] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.

[522] Environment, Planning and Sustainable Development Directorate – Planning, 'Crown lease change,'https://www.planning.act.gov.au/leasing-and-titles/varying-crown-leases/crown-change-lease. Accessed 10 February 2020.

[523] Friends of Hawker Village, *Submission 11*, p. 4.

[524] Dr Denham, *Transcript of Evidence*, 10 September 2018, p. 8.

> found that procedural requirements (preparing, submitting, and supporting plan amendment or development applications) were significant contributors to the cost of residential development in Australia.[525]

7.56 In other jurisdictions the process is very similar to that in the ACT. Depending of the type of development, some kind of pre-application process is encouraged or mandatory; the application is made/lodged; the application is put out for consultation/notification, and it is assessed (although this can happen in either order). At the end of the assessment a determination or decision is made; and, depending on the type of development, the decision can be appealed.

7.57 When asked by the Committee to clarify the process in the ACT, in particular the difference between the completeness check and the assessment, the Directorate provided the following details:

> There is the pre-DA meeting, consultation, the DA is lodged, there are completeness checks, to see whether the basic documents are there; then currently it is notified and our team commence their assessment.[526]
>
> Once you get to a stage where you think…you are in a position to lodge a DA, you will compile your documentation in accordance with the documents required…and submit that to the gateway team. The gateway team will then go through the process of checking it for documentary completeness, whether all the documents are there. They do not, at this stage, go through the actual documents to check the validity of the statements or things like that. There are two options…you can be failed or passed at this stage. If we fail it, we send out a failure notice to the person who submitted the DA at that stage telling him what additional information is required.[527]
>
> Once it is passed they get invoiced. Part of the checking we do is to calculate a DA fee according to our statement of fees. When the DA fee is paid it is deemed lodged from that date onwards.[528]
>
> What happens immediately after lodgement is that the notification process commences right after that…[and also] entity referral. All the entities are identified as part of the completeness check and the application gets referred to the entities. The DA then goes to the assessment stream and through the various stages of assessment…Post the notification period, once the notification period has closed, we can hopefully undertake a final assessment—we are currently trialling a staged

[525] Australian Housing and Urban Research Institute, *Submission 38*, p. 1.
[526] Mr Ponton*, Transcript of Evidence*, 13 September 2018, p. 153.
[527] Mr Cilliers, *Transcript of Evidence*, 13 September 2018, p. 149.
[528] Mr Cilliers, *Transcript of Evidence*, 13 September 2018, pp. 149-150.

> assessment process—and we…identify the issues… raised through representations or submissions received through public notification…There may be further information required at that stage by the person undertaking the assessment. We require that information under either section 141 or 144. The difference between the two sections is that section 141 is just clarifying information or receiving additional information, and section 144 is more if you require an amendment of a DA to address certain issues picked up either through entity advice or through the representations received. One of the issues identified from the representations may require it. Then there is potentially another step for more significant DAs, and that may be consideration by the major projects review group before we can make a decision on it.
>
> Larger proposals may also be required to go through the design review panel process.[529]

7.58 Dira Horne informed the Committee of issues she encountered when she had to navigate the Development Application process as an applicant and 'how difficult it is for "ordinary people" to access and complete the required documentation, to filter and process the inconsistent advice and instruction from the Department and to manage the 'unnecessary bureaucratic red tape.'[530] Specific issues included:

- difficulties in downloading the DA;
- being refused a pre-meeting so the DA could be explained;
- needing to make multiple visits in person to Shop Fronts and offices for assistance;
- needing to submit additional plans after being assured they already had everything;
- having to resubmit plans that had already been submitted;
- agreed timeframes being exceeded;
- delays in the 'complicated DA' being assigned a Senior Officer
- having an officer help her fill in forms only to be told by another officer later that the form had been filled out wrong;
- being told to Google how to get an Adaptability report;
- only getting an outcome after emailing the Director-General of EPSDD; and
- a lack of clarity as to whether the applicant will or will not be advised of their application.[531]

7.59 Ms Horne suggested that all applicants should be allocated a case officer so that a person only had to deal with a single point of contact in the Authority and that people with difficult or

[529] Mr Cilliers *Transcript of Evidence*, 13 September 2018, pp. 149-150.
[530] Dira Horn, *Submission 24*, pp. 1-2.
[531] Dira Horn, *Submission 24*, pp. 2-3.

unusual applications should be allocated a more senior officer. She also indicated that such approach should reduce the instances of inconsistent advice being given.[532]

> I said, "If nobody understands this process, give me one person I can liaise with." That is all I wanted. I understand that it is training and it is a new piece of legislation, but I just wanted one person to deal with instead of turning up every morning with different sets of plans and trying to work through what should have been a fairly simple process.[533]

7.60 Icon Water noted the similar concerns in relation to the lack of clarity around the requirement for utility provisional design approval, the lack of information about the content required for statements against relevant criteria; or what the workflow is for Environment Significance Opinion (ESO) submission etc.[534]

7.61 Icon Water also noted the 'requirement for utility provisional design approval needs to be more clearly specified for proponents within the DA process' and suggested that 'a new mandatory document/form for utility provisional design approval as a prerequisite for all DA submissions could improve this process.'[535]

7.62 Whilst the PIA 'Other Planners workshop' also identified 'a strong need for ACTPLA to provide early up-front advice to applicants on key DA issues'[536] the Property Council noted in their submission that there is a pressing need:

> to ensure consistency between the details of submission information required and the information required for e-Development, the Authorised Forms and the online information guides. There can be some ambiguity between these documents, or lack of understanding of what is required.[537]

7.63 Ms Horne suggested that 'a "simple to read "check list" be developed which clearly outlines the steps (in order) to be undertaken before lodgement.' This list would include all the plans that need to be submitted with DA.[538]

7.64 In response to this, the Minister indicated that:

> There is a document checklist…available for applicants... It shows the minimum amount of documentation that must be required. That checklist is updated quarterly, so it is relative to the currency of DAs going in now.[539]

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[532] Dira Horn, *Submission 24*, p. 3.
[533] Ms Horne, *Transcript of Evidence*, 13 September 2018, p. 136.
[534] Icon Water, *Submission 62*.
[535] Icon Water, *Submission 62*, p. 4.
[536] Planning Institute of Australia, *Submission 29*, p. 8.
[537] Property Council of Australia, *Submission 49*, p. 3.
[538] Dira Horn, *Submission 24*, p. 3.
[539] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 143.

7.65 Another concern was that the DA process had become too focused on 'ticking all the boxes' rather than the outcome:

> …advice to 'first-time' applicants through the DA documentation requirements on the EPSDD website may not be as effective as possible. It results in some applicants only submitting what is 'legally' required, rather than more appropriately documenting their proposal. The guidelines for applicants should emphasise the focus is to be on the development outcome, not the administrative process.[540]

7.66 Jane Goffman expressed the need for an urgent 'root and branch' review of DA processes claiming that current processes:

> …deliver extremely poor outcomes, not only in terms of the Territory Plan's triple bottom line and the National Capital Plan's strategic directions, but they foster an environment in which design and construction standards and genuine merit are regularly disregarded in favour of ticking off boxes to ensure fast turnaround times and robust approval numbers.[541]

7.67 Although the nature of the information required for DA lodgement was similar to that of other jurisdictions, concerns were expressed that the 'level of documentation required' for DA lodgement was not consistent or even acceptable, particularly when 'responses provided by some applicants to Statements against Criteria are simply "Complies".'[542] It was felt that 'Statements against Criteria' were 'the opportunity for applicants to justify the development proposal and should be considered an important input into the DA Assessment process.'[543]

7.68 In evidence to the Committee the PIA indicated that:

> It is inherent that every application should not just be a statement against criteria that says, "Yeah, I comply with this code." There should be something inherent that says to me as the applicant that the government demands of me to demonstrate why this proposal is a good planning outcome. We can draw on various resource material about urban design quality or what have you, so there is a range of things I can draw on to achieve that. But the fundamental is that it should be incumbent on every single applicant who lodges a DA to say in some way why this achieves a good planning outcome.[544]
>
> We might differ, but that statement should be there and it should allow the community to say, "I oppose this application because I don't agree with that introductory statement. I don't agree that the applicant has demonstrated a good planning outcome because they've used parameters or what have you that just aren't relevant for this

[540] Planning Institute of Australia, *Submission 29*, pp. 4-5.
[541] Jane Goffman, *Submission 27,* P. 2.
[542] Planning Institute of Australia, *Submission 29*, p. 4.
[543] Planning Institute of Australia, *Submission 29*, p. 5.
[544] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, p. 60.

> particular circumstance." That is a reasonable thing for the DA process to demand of applicants.[545]

7.69 In terms of the amount of supporting documentation required it was felt that it was currently a 'one-size fits all approach' and the 'Government workshop' felt that 'the extent of supporting documentation should depend on the complexity of the development proposal' and that a disproportionate amount for simple matters not only increased the workload for assessing officers but also confused applicants seeking approval for non-exempt minor works.[546]

7.70 Consequently the 'Government workshop' felt that 'minor works and simple development proposals only need a simple statement confirming compliance with Codes' however 'Statements against Criteria provided by applicants assisted the assessing officer for the more significant development proposals.'[547]

MISSING OR MISLEADING DOCUMENTATION

7.71 Red Hill Regenerators explained in their submission that the 'burden and cost of proving the DA is defective is borne by volunteer community groups and individuals.'[548]

7.72 A number of submitters documented some recent deficiencies that have been noticed in the information provided as part of DAs. Such deficiencies included:

- Missing shadow diagrams;
- Missing vehicle turning path diagrams;
- Missing Gross Floor Area (GFA) calculations;
- Unclear or incomplete setback measurements and plan sizes;
- Incorrect short description of the DA proposal;
- Missing calculations for Private Open Space;
- Missing calculations for Plot Ratio and other parameters; and
- Number of storeys differ within paperwork.[549]

7.73 Both the Red Hill Regenerators and the Hughes Residents Association believed that penalties should apply for non-compliance when submitting DAs:

> In addition to compulsory renotification, financial penalties should apply to incorrect to misleading statements in a DA, and to the use of assessment reports and other analyses which do not relate specifically to the DA, and are therefore potentially

[545] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, p. 60.

[546] Planning Institute of Australia, *Submission 29*, pp. 4-5.

[547] Planning Institute of Australia, *Submission 29*, p. 4.

[548] Red Hill Regenerators, *Submission 10*, p. 5.

[549] See for example, Friends of Hawker Village, *Submission 11*, p. 3; Inner South Canberra Community Council, Submission 44, p. 2.

> misleading. For seriously misleading information, the penalty should be the rejection of that DA and prohibition from lodging further DAs for any site in the ACT for an appropriate period.[550]

7.74 The KBRG also believed that developers who have identified they are in breach of regulatory requirements should have their DA rejected, or at the very least be made subject to a more rigorous process:

> We request the committee review practices for accepting DAs from developers where they have already identified they are in breach of zoning or other regularity requirements, for example, where they have exceeded height limits or not met parking or solar access requirements. We believe this should be an automatic rejection of the proposal or an alternative processing/assessment practice be adopted that included more rigorous community consultation and assessment. There is an increasing trend of large developments submitting DAs in blatant non-compliance on the assumption that it will be approved 'for the greater economic good' and the threat that the developer could not proceed with the development without exemptions to regulation and legislation. We believe that the ACT Government should at all times stick to its agreed rules and regulations and only under extreme circumstances consider exemptions to this.[551]

7.75 However, it was also noted by Ms Cully, on behalf of the Hughes Resident's Association, that:

> If there was a requirement for all DAs to be submitted in such a way that there is the opportunity for proper public scrutiny and that there is a disincentive for developers to provide inaccurate and incomplete information, it would be a self-correcting system.[552]

7.76 In contrast to community perspectives it was suggested by the AIA that:

> If there is an opinion that information is missing, well, there is a checklist that is very clear around the information that is required for a DA. If it is missing, it is because it was not required to go to public consultation, I imagine. There might be an expectation from that community group that that information should be available when statutorily it is not.[553]

7.77 In an Answer to a Question on Notice the Directorate challenged the assertion that plans are often incomplete or misleading:

> The planning and land authority considers each development application on its merits. At the time an application is made, it is assessed against the *Planning and Development Act* 2007 (the Act) and the Territory Plan…Where a subsequent development does not

[550] Hughes Resident's Association, *Submission 40*, p. 8; Red Hill Regenerators, *Submission 10*.
[551] Kingston and Barton Residents Group, *Submission 39*, p. 6.
[552] Ms Cully, *Transcript of Evidence*, 10 September 2018, p. 10.
[553] Mr McPherson, *Transcript of Evidence*, 10 September 2018, p. 49.

> comply with the approval, this is not an issue of misleading plans, rather an issue that development is not completed in accordance with the approval.[554]

7.78 In the same Answer to a Question on Notice the Directorate further indicated that:

> The planning and land authority can only reject plans if they do not meet the minimum documentation requirements in the Act, specifically section 139 (Form of Development Applications).
>
> Where an application does not meet the requirements of the Act, this will be identified in the completeness check phase and the application will not be accepted for formal lodgement until it complies with the requirements of the Act.[555]

7.79 The Committee noted that because a DA has been lodged on the website many in the community believe that the documents have a level of credence and are complete. Many are of the view that the application has been accepted by the Authority then surprised to find when the DA is notified that there are missing or erroneous documents.

7.80 In response the Directorate acknowledged that:

> Perhaps we need to improve the communication…it has not been accepted by the planning authority; it has been lodged with the planning authority. By law, we must notify the application in its form because people have the right to test anything. [556]

7.81 Despite this perspective from the Directorate, the PIA 'Other Planners workshop' suggested that:

> The DA should be subject to an initial assessment, prior to formal public notification, and the applicant advised of any concerns. The applicant would have the option to amend the DA prior to notification or risk the need for re-notification if resolution of the issues required significant design changes.[557]

7.82 In response the Directorate stated that:

> If what I am hearing is some sort of pre-assessment, I would be suggesting that if the committee were to make a recommendation along those lines, that would require some legislative amendments…Firstly, there is no such thing in the legislation about pre-assessment…Secondly, that would have to occur, and it is a degree of assessment, and it would take some time… If we were doing two phases of assessment, we would need to extend the time frames; then that would have an impact on proponents…[558]

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[554] *Answer to Question on Notice No 8,* answered 9 October 2018.
[555] *Answer to Question on Notice No 8,* answered 9 October 2018.
[556] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 145.
[557] Planning Institute of Australia, *Submission 29*, p. 8.
[558] Mr Ponton, *Transcript of Evidence*, 13 September 2018, pp. 145-146.

7.83 The Directorate indicated that they could possibly 'expand the completeness check' but were concerned that they 'would be bringing forward a lot of the assessment into that completeness check' noting that what would end up being notified:[559]

> …would be our draft decision. If we have undertaken the [pre]assessment, rather than seek people's views on an application that has been lodged, we will have formed a view that it is approvable before we notified…[560]

7.84 When asked by the Committee about the process whereby a comment on an application has been submitted, but then something within the application is missing or incorrect, the Directorate stated that 'if there is a third-party right of review, it would be an application to the tribunal,'[561] however they also indicated that:

> If somebody is concerned…our team will go and look in more detail. They will engage with engineers and fully understand that particular issue and then provide a written response to that concern.[562]

7.85 In this context if was suggested by Ian Elsum that:

> An additional step should be added to the planning and land authority's assessment process that enables the community to send questions to the authority about apparent inconsistencies between various parts of the DA and missing information that is impeding community assessment of the merits of the DA. The planning and land authority would then decide whether to contact the proponent of the DA about providing additional information and lengthening the period for representations.[563]

Recommendation 34

7.86 The Committee recommends that the *Planning and Development Act* 2007 is amended to allow for the rejection of Development Applications which contain false or misleading information.

FACT CHECKING DEVELOPMENT APPLICATIONS

7.87 Jane Goffman in her submission noted that when she had inspected RZ2 approvals on the public register it appeared that calculations, such as those relevant to GFA in RZ2 zoning, had

[559] Mr Ponton, *Transcript of Evidence*, 13 September 2018, pp. 142-143.
[560] Mr Ponton*, Transcript of Evidence*, 13 September 2018, p. 144.
[561] Mr Ponton*, Transcript of Evidence*, 13 September 2018, p. 147.
[562] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 148.
[563] Ian Elsum, *Submission 8*, p. 2.

been 'fiddled' in order to 'slide in under the maximum allowable'. She explained that this indicated that the accuracy of information in the DAs was 'not being checked'.[564]

7.88 Ms Goffman also documented her experiences with matters in Dickson in 2011-12 and a more recent matter impacting on Dower Community Association and North Canberra Community Council where she indicated that coordinated efforts had:

> demonstrated that numerous calculations and claim supplied by the applicant were false and misleading and as mandatory rules were broken it was sufficient on the basis of those alone to refuse the DAs altogether. Since the figures supplied had not been interrogated, the assessment officers had apparently treated all the other non-compliance issues where qualitative criteria were not met as irrelevant.

7.89 Ms Goffman went on to state that:

> What both cases demonstrated were the importance of careful fact checking, which could be much more easily done if the applicant were required to provide an accurate model and drawings in an electronic format such as AutoCAD that can be readily analysed in addition to pdf files, and also that plans be made available to the assessing officers on paper at a 1:100 scale and become part of the public register. Viewing any large plans on a screen makes it extremely difficult to interrogate those plans properly.[565]

7.90 In order to combat this she suggested that:

> …every DA prior to lodgement go through a rigorous system of fact checks, because…there is a gigantic technical burden that has been shifted onto volunteers.[566]

7.91 In noting that applications can be rejected if they do not meet the minimum legislative requirements or are lodged in the wrong track, the Directorate stated in an Answer to a Question on Notice that:

> The planning and land authority can only reject plans if they do not meet the minimum documentation requirements in the Act, specifically section 139 (Form of Development Applications).
>
> Where an application does not meet the requirements of the Act, this will be identified in the completeness check phase and the application will not be accepted for formal lodgement until it complies with the requirements of the Act.
>
> In 2017 /18, the first time failure rate for completeness checks was 77 per cent. In 2016/17, the first time failure rate for completeness checks was 78 per cent. From 1

[564] Jane Goffman, *Submission 27,* p. 1.
[565] Jane Goffman, *Submission 27,* p. 1.
[566] Jane Goffman, *Submission 27,* p. 1.

> January 2016 to 30 June 2016, the first time failure rate for completeness checks was 67 per cent. [567]

7.92 The Directorate indicated that even if the DA passes the completeness check, it does not mean the DA does not have any errors in it:

> …the assessment is exactly that: it is an assessment. We cannot stop people from lodging an application. They may make an application with errors in it, but part of the assessment process is that we will pick those errors up. If, for example, they have not clearly identified dimensions on a plan, then we will identify that. If during the assessment process there is noncompliance with rules or there is not a statement against the criteria, we will pick that up.[568]

7.93 The Property Council noted that despite DAs with errors getting past the completeness check there are times where errors that seem to be minor were preventing DAs from being accepted for notification and assessment:

> …lodgement of a DA can be delayed as there is misalignment between the lodging party and ACTPLA. It is not unheard of for lodgements to be rejected because receiving officers in the Gateway Team believe an incorrect term has been used for the formal land use. This does not impact the plans nor proposals but can lead to delay and friction before formal processes have even commenced. We recommend greater flexibility, both in the DA documentation to be lodged for justification, and the capacity for the completeness check officer to determine what DA documentation is required.[569]

EXPERTISE OF STAFF

7.94 Many believed that the missing or erroneous documents were an issue because there was insufficient rigour being applied to the completeness and assessment process and that this was likely due to lack of expertise and number of trained staff.

7.95 Carol Russell detailed what she believed to be 'insufficient rigour' being applied to processes involved in DA lodgement and assessment, giving the example of the proposed Waste and Materials Recovery facilities at 11 Ipswich Street, Fyshwick where she asserted that no-one had questioned the proponents assertion of consistency with the Territory Plan or the DAs completeness and veracity.[570]

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[567] *Answer to Question on Notice No 8,* answered 9 October 2018.
[568] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 142.
[569] Property Council of Australia, *Submission 49*, p. 7.
[570] Carol Russell, *Submission 32*, pp. 1-2.

7.96 Ms Russell indicated that this particular matter illustrated her belief, like that of many other witnesses,[571] that there are deficiencies in the expertise and numbers of 'trained staff capable of checking if statutory requirements are met' and that the 'EPSDD should be adequately resourced with the personnel and expertise required for it to perform its tasks professionally.'[572]

7.97 In evidence given to the Committee Ms Gingell, representing the Friends of Hawker Village, also spoke of her concerns about the number of qualified staff:

> Accuracy and completion of DA documents has been problematic. We believe that there should be adequate skilled staff to scrutinise applications to ensure that all relevant documents have been submitted and forms completed prior to notification. We have encountered missing documents, incomplete forms and inaccurate DA descriptions.[573]

7.98 The Master Builders Association (MBA), whilst stating that more resources in the development assessment area were needed also acknowledged that:

> …the independent planning authority judgement needs to be supported; it needs to be backed. They are trained professionals after all and they hear submissions from the community and from applicants alike. Their judgement should be trusted and supported. If it is open to third-party appeals or challenge almost every time, eventually, their enthusiasm for approving innovating solutions will deteriorate over time.[574]

COMMITTEE COMMENT

7.99 The Committee notes with concern that the completeness check first time failure rate is between 67 percent and 78 percent. This represents a massive waste of effort for both applicants and the Directorate and the Committee believes that this issue needs to be addressed urgently.

7.100 The Committee notes that detailed information is available on the Directorate website outlining the documentation that needs to be submitted with development applications[575] has recently been updated but is concerned that this will not be enough to remedy the failure rate.

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[571] Carol Russell, *Submission 32;* Planning Institute of Australia, *Submission 29*; Housing Institute Australia, *Submission 47*; Master Builders Association, *Transcript of Evidence*, 10 September 2018; Australian Institute of Architects, *Transcript of Evidence*, 10 September 2018.

[572] Carol Russell, *Submission 32*, pp. 1-2.

[573] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.

[574] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 35.

[575] Minimum Documentation Requirements for Lodgement of a Development Application (DA), https://www.planning.act.gov.au/__data/assets/pdf_file/0009/1096911/minimum-documentation-requirements-for-lodgement-of-a-development-application.pdf. Accessed 10 February 2020.

7.101 The Committee has also carefully considered community concerns about the reliability of plans released for public notification and takes the view that the perceived lack of reliability is undermining public confidence in the system.

7.102 The Committee does note the concerns put by the Directorate that additional checking prior to public notification would amount to commencing the assessment processes before the community has its say, however the Committee takes the view that there is a half-way point that could be taken with a completeness check process which would not amount to assessment.

Recommendation 35

7.103 The Committee recommends that the Directorate urgently work with industry and professional groups on solutions to combat the high first-time failure rate for completeness checks, and consider options like regular training sessions, additional e-Development functionality and better information for applicants.

Recommendation 36

7.104 The Committee recommends that the completeness check process is expanded to include a check of the accuracy of key elements such as scale, north orientation and the plot ratio calculation.

Recommendation 37

7.105 The Committee recommends that a note is placed on each public notification document stating that the document is as supplied by the applicant and has not yet been assessed by the ACT Government. This note should also provide contact details for the community to notify the Directorate if any errors are identified.

CUSTOMER SERVICE CONCERNS

7.106 The hard work undertaken by the Authority in relation to DAs was noted by the Committee throughout the inquiry, however some issues were brought to their attention in relation to how some submitters felt they were treated by Authority staff.

7.107 Allan Spira informed the Committee that whilst he had had a mostly positive experience with the handling of DAs he 'had concerns with the general attitude of some planning officers' who presented 'policing rather than a facilitating attitude' towards applicants.[576]

7.108 Mrs Davison noted that the response from the Directorate in relation to queries from the community was not always helpful:

> If we go in and ask for help, sometimes you get it; sometimes you do not. The process is very inconsistent. If we ask for an extension, it is really because there are lots of documents to go through and we need a bit more time. We are not asking for extensions because we just want to sit on it for three weeks and pick it up later.[577]
>
> The directorate seems to meet with developers along the way; we have FOI things that show that that happens. But often when residents go in to meet or try to ask questions, we get the run-around and get told, "It is an active process so we cannot talk to you."[578]

7.109 Helen Goddard also raised issues with the response given by some staff to residents who make inquiries about developments:

> I am often left shaking my head in dismay at the treatment of residents who make enquiries — usually through Canberra Connect — about developments (either at approval or post-approval). Invariable (and I have first-hand experience of this) the resident is left feeling that it was an inappropriate enquiry (the "none of your business" tone), or the incredibly patronising response (the "you won't understand" or "you don't need to understand" tone).[579]
>
> These issues can be easily resolved through appropriate customer service training — whereby staff actually understand that residents pay their wages and are key stakeholders in any development application.[580]

Recommendation 38

7.110 The Committee recommends that the Directorate consider additional customer service training for staff engaged in customer service roles.

[576] Allan Spira, *Submission 25,* p. 1.
[577] Mrs Davison, *Transcript of Evidence*, 10 September 2018, p. 64.
[578] Mrs Davison, *Transcript of Evidence*, 10 September 2018, p. 64.
[579] Helen M Goddard, *Submission 2*, p. 4.
[580] Helen M Goddard, *Submission 2*, p. 4.

E-LODGEMENT

7.111 As detailed in Chapter 3, DAs must be lodged through e-Development (eDev). Through this tool, applicants can upload plans, documentation and any addition information or amendments. The tool enables applicants to view the status of their application at any time. DAs have not been accepted over the counter, via post or email since January 2012.[581]

7.112 All jurisdictions have some form of portal through which applicants can lodge development applications and other relevant documentation. These include:

- NSW – NSW Planning Portal
- Victoria - VicSmart
- Queensland – MyDAS2
- Western Australia – PlanWA
- South Australia – SA Planning Portal
- Tasmania - iplan
- Northern Territory – Development Applications Online

7.113 The Minister told the Committee that:

> …the upgrade of e-development…is well underway and will provide the development industry and the community with an improved service and greater accessibility of DAs and supporting documentation. The upgrade, once released, will allow the community to access any DA and its associated forms, plans and supporting documents during the notification process. It will also allow access to previous decisions on DAs lodged through the upgraded e-development platform. I expect the updated e-development systems to be rolled out later this financial year. [582]

7.114 In their submission the Property Council welcomed the review of eDev, particularly as they were of the opinion the 'current system is clunky and prone to failures' and 'struggles to cope with Development Applications that require a large amount of documentation.'[583]

7.115 At the time of the hearings the AIA also noted that the current process was 'clunky' and that work on improving it has been 'incredibly slow'.[584] They expressed a desire 'to contribute further to the development of this portal' and 'see some hard deadlines in respect to its introduction.'[585]

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[581] Environment, Planning and Sustainable Development Directorate – Planning, 'eDevelopment,' https://www.planning.act.gov.au/tools-resources/e-services/edevelopment, accessed 2 October 2019.

[582] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 141.

[583] Property Council of Australia, *Submission 49*, p. 8.

[584] Mr McPherson, *Transcript of Evidence*, 10 September 2018, p. 48.

[585] Mr Leeson, *Transcript of Evidence*, 10 September 2018, p. 43.

7.116 The PIA also noted that the 'e-Development system was not working the way it should' and that it was 'not easy to negotiate through the system,' particularly when small errors, often on forms that are difficult to understand, effectively mean the process has to start again.[586]

TRACKING, REAL-TIME FEEDBACK AND PERSON TO PERSON CONTACT

7.117 There was a general consensus that irrespective of the medium there should be an ability to be able to see at what stage of the process a DA is up to.[587] In relation to eDev there was a definite interest in real-time feedback.

7.118 Icon Water highlighted the need for 'proponents of the DA process expect to be able to closely track timeframes and detail required so they can manage other project related matters such as procurement, contracts, sequencing of project activities.'[588]

7.119 Whilst supporting the introduction of eDev, Icon Water noted that:

> there are some key DA stages which remain outside the e-Development tracking system and these are not acknowledged, tracked or subject to statutory timeframes. Icon Water's experience has been that these stages are often subject to protracted delays.[589]

7.120 They noted that Form 4 custodian submission and ESO applications for heritage ecology, contamination, and development on reserved land, are impacted by the reliance on email instead of eDev and are unable to be tracked. Icon Water noted that it is difficult for 'proponents to establish timeframes for regulatory evaluation and response' and that this is 'exacerbated by the fact the applications gets disseminated to multiple regulators' with differing timeframes for resolution.[590]

7.121 The Property Council also made comment in relation to the feedback and contact elements of eDev indicating in their submission that there was 'not enough feedback with regards to the submission of documents or notification of next steps'[591] and noted that:

> There is limited opportunity for the applicant to clarify issues quickly and efficiently when there is a point of clarification required for the assessment officer or entity in the interpretation of the plans or submissions.[592]

7.122 The PIA noted that the system needed 'refining and updating' and was of the opinion that:

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[586] Planning Institute of Australia, *Submission 29*, pp. 6-7.

[587] See for example, Woden Valley Community Council, *Submission 54*; Kingston and Barton Residents Group, *Submission 39.*

[588] Icon Water, *Submission 62*, p. 4.

[589] Icon Water, *Submission 62*, p. 4.

[590] Icon Water, *Submission 62*, p. 4.

[591] Property Council of Australia, *Submission 49*, p. 8.

[592] Property Council of Australia, *Submission 49*, p. 8.

> Real-time feedback on issues with the current system would be appropriate together with more flexibility to deal with complex submissions, such as person-to-person contact or direct email to resolve upload issues. The system should allow applicants to contact ACTPLA direct and ask ACTPLA Officers to make agreed changes on e-Development platform when uploading information.[593]

7.123 The PIA further indicated that other jurisdictions have portals that send through emails for notifications of DAs and suggested that:

> a 'real-time' information tracking system would be of benefit. The ability to see where a DA is up to, in detail (not just the e-Development "awaiting decision" type commentary) would reduce the number of calls and emails to assessing officers seeking advice of the DA status on behalf of proponents.[594]

7.124 In an Answer to a Question on Notice, the Directorate told the Committee that:

> Throughout 2017-18, the Environment, Planning and Sustainable Development Directorate and Access Canberra have been working on an upgraded e-Development program to create a new platform for DA lodgement and workflow management. It is intended that application documentation and notices of decisions for DAs lodged through the new platform will remain as publicly accessible records on the platform.[595]

COMMITTEE COMMENT

7.125 It was noted by the Committee that the allocated capital funding of $600,000, in the 2019-2020 Budget Papers, is additional to funding provided for in 2015 to modernise the decade old technology used in eDev.[596]

7.126 The Committee understands that this budget allocation is to further develop eDev to a single point of entry for land, planning, and building and licensing management and replace current applications.

Recommendation 39

7.127 The Committee recommends that the Directorate expediate the update of the e-Development portal.

Recommendation 40

[593] Planning Institute of Australia, *Submission 29*, p. 6.
[594] Planning Institute of Australia, *Submission 29*, p. 7.
[595] *Answer to Question on Notice No 11,* answered 4 October 2018.
[596] ACT Budget 2019-20, *Budget Paper 3*, p. 151.

7.128 The Committee recommends that the Directorate consider incorporating 'real time' tracking, contact and feedback elements into e-Development.

ASSESSMENT OF DEVELOPMENT APPLICATIONS

7.129 In the ACT the assessment and approval of DAs is undertaken by the ACT Planning and Land Authority situated in the Environment, Planning and Sustainable Development Directorate. In other jurisdictions the following bodies are responsible for handling DAs:

- Victoria - approval from local councils or the Minister for Planning. The DA process may involve Minister-appointed independent planning panels, Advisory Committees and/or Environment Effects Inquiries.
- NSW - approval from a council, a Regional Panel, a Sydney planning panel, or, from the Minister of Planning.
- Queensland - local governments, usually councils, act as the assessment manager. Where the state has an interest in a DA, the State Referral and Assessment Agency (SARA) acts to assess that interest.
- Western Australia - local government—councils— are delegated as the responsible authority by the Western Australia Planning Commission (WAPC).

7.130 In the ACT, the Minister may make a decision on a development application if:

- it raises a major policy issue;
- it seeks approval for a development that may have a substantial effect on the achievement or development of the object of the Territory Plan; or
- the approval or refusal of the development application would provide a substantial public benefit.[597]

CONSIDERATION OF OBJECTIVES, CODES, RULES AND CRITERIA

7.131 There was a common perception amongst community groups that criteria effectively subverted rules with some believing that 'criteria' was being used to avoid compliance with, overstep or encroach on 'rules'[598] whilst others believed there should only be rules:

> …where you have a clear, rule-based system there is not scope for fudging here, fudging there, pushing the boundaries, exploiting loopholes.[599]

[597] ACT Government, 'Development Applications,' https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications. Accessed 10 February 2020.

[598] Gungahlin Community Council, *Submission 22*, p. 4.

[599] Combined Community Councils of the ACT, *Submission 21;* Ms Cully, *Transcript of Evidence*, 13 September 2018, p. 127.

7.132 Ms Cully, on behalf of the Hughes Residents Association, told the Committee that:

> There is a wide belief in the community that the government has protections for things like solar access, the amenity of urban gardens and the quality of life that we enjoy, and we see that in the objectives. In the objectives of the plan those sentiments are there, but it is not translated down into an accountable, transparent system for ensuring that those objectives are met.[600]

7.133 There was also concern that these objectives, which are given effect by codes and rules, are not being met even when codes and rules are complied with:[601]

> …the presumption that rules/criteria ensure that zone objectives are met is a false premise. Blocks are not homogeneous, and site location and character, as well as impact on neighbours, need to be given more weight in the assessment process.[602]

7.134 Friends of Hawker Village noted that in their experience:

> ACTPLA's DA assessors can, in some instances, approve gross deviations from rules. FoHV finds this unacceptable when a DA has received public comment criticising aspects of the development. The rules of the MUHDC provide very little protection of residential amenity for existing residents close to proposed development. Our experience of ACAT reviews is that criteria should be read in the context of the rule to which it is attached. For example, if Principal Private Open Space (PPOS) under the rule is required to be, say, 28 square metres, a deviation of a couple of square metres might be acceptable especially if other PPOSs in the development are larger than the rule requires. A deviation of eight square metres is not acceptable. In the recent DA 201731656 (Weetangera) review, a percentage deviation appeared quite small but when translated to square metres left the development over 200 square metres short of open space – yet the assessing officer was happy to consider the criteria met. Assessing officers should be required to reject significant deviations from the rules.[603]

7.135 Ms McGrath asserted that 'developers should be encouraged as much as possible to comply with Development Code rules and not overly rely on criteria to get around rules' and in turn the:

> Planning Authority needs to apply more rigor in its assessment of compliance with rules and criteria and require developers to clearly address any criteria they rely upon, including by providing evidence criteria have been met (e.g., providing diagrams to illustrate compliance with solar access requirements).[604]

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[600] Ms Cully, *Transcript of Evidence*, 10 September 2018, p. 13.
[601] Friends of Hawker Village, *Submission 11*; Combined Community Councils of the ACT, *Submission 21*.
[602] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.
[603] Friends of Hawker Village, *Submission 11*, p. 7.
[604] Angela McGrath, *Submission 36*, p, 1.

7.136 This perspective was shared by Ms Gingell, on behalf of the Friends of Hawker Village, who told the Committee that:

> In the assessment of DAs, where the proponent relies on criteria for compliance, it is our experience that assessing officers are far too lenient. Rules are drafted for a purpose, and the application of criteria should not undermine the intent of the rule. We accept the need for some flexibility, but generally there should be compliance with rules. Any deviation should be minor, especially when neighbours have objected to reliance on criteria.[605]

7.137 Ms McGrath indicated to the Committee that one of the biggest issues is that the community needs to be able to understand what is, and is not, acceptable:

> More clear guidance needs to be provided publicly, and in one place, on the interpretation of compliance against criteria including the interplay of rules and what would be regarded as acceptable in term of divergence from rules.[606]

7.138 Mr Hopkins, on behalf of the Master Builders Association, told the Committee:

> …even at ACAT stage, that a disagreement between whether the planning authority has assessed an application properly often comes down to a judgement between whether the planning and rules have been met or the criteria have been met. I think in the community's mind there is a hierarchy amongst those and that the rules are more important than the criteria. That is not how we understand the Territory Plan is established.[607]

7.139 The Griffith Narrabundah Community Association, however advocated that the language that is used in the Territory Plan is also an issue:

> The language and criteria in the Territory Plan are qualitative and subjective, meaning that decisions on e.g. what is 'reasonable access', a 'proportionate' open space, and a 'minor impact' are made routinely and with no scope for scrutiny by affected neighbours.[608]

7.140 The Property Council acknowledged that the way the Territory Plan is constructed does not assist understanding and is potentially misleading. Whilst it is 'understood that the rules are deemed to satisfy most parts or those minimum compliance requirements,' however it is not as clear that 'if a criterion is in place, it does not mean that it is any less good or it is a noncompliance.'[609]

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[605] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.
[606] Angela McGrath, *Submission 36*, p, 2.
[607] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 35.
[608] Griffith Narrabundah Community Association, Submission 64, p. 2.
[609] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 26.

7.141 Mr Hopkins, on behalf of the MBA, agreed and stated that a developer 'not complying with the rules and putting forward an alternative solution, and going down the criteria path, is equally as compliant with the Territory Plan.'[610]

7.142 The AIA noted that there was a place for strict abidance with the rules but that there had to be room to be innovative:

> I think sticking to the rules definitely has a place in simple kinds of developments that should not be ruffling feathers, that can fit, that everyone is confident with and where they know what will be expected. I think in larger areas or unique sites there is always design. It needs to be customised; it needs to be unique. I think in terms of a mechanism, perhaps it is in the form of a review group made up of professionals who are working towards the best outcome. I do not think a set of rules can apply to all sites. Therefore, we need to view it holistically. So I think it needs to be site specific and led by professionals.[611]

7.143 Jane Goffman suggested that:

> …in assessing compliance there is an understanding that any numeric rule has been derived through a process that typically establishes a CODE MINIMUM. There is in fact a difference between the minimum and the desirable, and in order to grant approval there needs to be an explicit reference to the concept of merit. Unless the merit track actually recognises and delivers merit, we will continue to reward mediocrity and receive substandard development.[612]

7.144 Mr Hopkins, on behalf of the MBA, concurred indicating that strict compliance with the rules would:

> …encourage this stock standard approach to development. It will mean we get lots of proposals which comply with planning rules. No-one will be game to try an alternative solution or an innovative solution if there is a risk that the planning authority's decision may be subject to a third-party appeal.[613]

REFERRAL TO ENTITIES

7.145 AHURI noted that:

[610] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, pp. 38-39.
[611] Ms de Rome, *Transcript of Evidence*, 10 September 2018, p. 46.
[612] Jane Goffman, *Submission 27*, p. 2.
[613] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 35.

> Depending on the jurisdiction and the details of the local plan or requirements contained in other regional or state plans or policies, some categories of development will need to be referred to other agencies for their views or concurrence.[614]

7.146 Like the ACT, most jurisdictions (e.g. QLD, SA, Vic and WA) entity/agency referrals are as required by Statute or Regulation – whether that be pre-lodgement, after lodgement, post approval or a combination of all three.

7.147 Industry groups highlighted the need for greater coordination between government agencies with the AIA informing the Committee of the inconsistency in approaches to DAs by Transport Canberra and City Services (and EPSDD:

> We would like to see greater uniformity with respect to how the DA process is managed by government agencies. For example, approval for works on public land is managed by Transport Canberra City Services (TCCS) and not the Environment, Planning and Sustainable Development Directorate (EPSDD). When a DA is lodged, it is forwarded to other government agencies and for public notification. However, with respect to consideration of DAs by Transport Canberra City Services, there is no uniformity in process and no public notification required. This absence of public notification can result in works being approved by Transport Canberra City Services without consideration of public opinion.[615]

7.148 In this context KBRG suggested that 'entity advice should be included in all DA documentation on the EPSDD website' and if the Authority has chosen not to accept entity advice, their reasons should be clearly and convincingly set out in the final decision and that included on the website.[616]

7.149 Angela McGrath also suggested that:

> Where the ACT Conservator of Flora and Fauna or any other Government authority objects to a DA, the Planning Authority should take seriously the requirement to consider other realistic alternatives, including alternatives that reduce the scale of the development (e.g., reducing the number of dwellings or overall footprint of the development).[617]

Recommendation 41

[614] Australian Housing and Urban Research Institute, *Submission 38*, p. 8.
[615] Australian Institute of Architects, *Submission 37,* p. 2.
[616] Kingston and Barton Residents Group, Submission 39, p. 4.
[617] Angela McGrath, *Submission 36*, p. 2.

7.150 The Committee recommends that referral entity advice is made available to all parties to the Development Application process, including objectors and the wider community, following the end of the referral period.

PRE-DA APPROVAL SITE VISITS

7.151 It was noted by Campbell Community Association that there are increasing examples of DAs being approved solely based on the documentation provided by the developers. Consequently, there is a perception that the Authority does not inspect the local area prior to approval.[618]

7.152 In Answer to a Question on Notice, the Directorate responded that:

> The planning and land authority undertakes site visits on a case by case basis when assessing development applications. Whether a site visit is undertaken depends on several factors, including the peculiarities of the development proposal, the peculiarities of the site, the applicable development track and issues raised in the assessment, representations and entity advice, among other factors.[619]

Recommendation 42

7.153 The Committee recommends that the Directorate require assessing officers to undertake pre-decision site visits for all developments for which representations are submitted.

CONSIDERATION OF CAPACITY FOR DEVELOPER TO COMPLETE OR PROGRESS DEVELOPMENT

7.154 The Committee was informed that it has been observed that:

> …there are a range of developments where the developer seemingly walks away from the development for long periods of time… Aside from the danger to those around, the developments I have cited look unsightly and should not occur. Further, the penalty for non-completion should perhaps be strengthened.[620]

7.155 Ivan Johnstone suggested that to prevent such scenarios from eventuating that 'developers must be required to provide financial viability analysis of their proposal for independent validation as part of the development assessment process.'[621]

7.156 Ms Goddard concurred, submitting to the inquiry that:

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[618] Campbell Community Association, *Submission 18*, p. 2
[619] *Answer to Question on Notice No 15,* answered on 2 October 2018.
[620] Helen M Goddard, *Submission 2*, p. 4.
[621] Ivan Johnstone, *Submission 4*, p. 3.

> I believe there should be a process to mitigate such events — perhaps developers should demonstrate (at the application phase) financial viability, together with relevant building knowledge, to complete the development.[622]

CONSIDERATION OF CUMULATIVE EFFECTS OF DENSIFICATION

7.157 Ms Gingell, on behalf of Friends of Hawker Village, told the Committee that 'the cumulative effect of densification is not addressed, as each DA is considered in isolation.'[623] It was felt that:

> The cumulative effect of densification on individual blocks does not appear to be considered on a street-by-street basis. It seems to be regarded as a future concern rather than one that should be considered with each DA.[624]

7.158 Ms Gingell also noted that:

> A related issue … is the treatment of DA's in a very standalone fashion, rather than in the context of their location within a street, suburb or precinct. An individual DA in a given location may have a modest impact on (e.g.) traffic, solar access, loss of green space, but if there are multiple DA's in the same region all having "modest" impact the collective impact becomes significant.[625]

7.159 Friends of Hawker Village noted this especially in relation to the application of the multi-unit housing development code (MUHDC) in inner Belconnen:

> Each block proposed for redevelopment is considered in isolation from its surroundings. The existing character of the street where the block is located and particular features such as 90-degree bends, narrow roads and absence of footpaths are not given sufficient consideration in the assessment process.[626]

7.160 The Hughes Residents Association also suggested that:

> Development in public areas, such as shopping centres and public open space, and in and adjacent to environmentally sensitive areas such as Red Hill Nature Reserve, should always be preceded by a comprehensive Government-run planning and consultation process, so that the design and parameters for development in the entire area are determined by the Government and residents, businesses and other local organisations, not on a block-by-block basis by developers.[627]

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[622] Helen M Goddard, *Submission 2*, p. 4.
[623] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 3.
[624] Friends of Hawker Village, *Submission 11*, p. 8.
[625] Gungahlin Community Council, *Submission 22*, p. 4.
[626] Friends of Hawker Village, *Submission 11*, p. 8.
[627] Hughes Residents Association, *Submission 40*, p. 4.

7.161 In an Answer to a Question on Notice about the holistic impact of a development on a precinct or suburb, the Directorate stated that:

> The holistic impacts of development are considered in the land use planning stage in the development of Territory Plan development zones and codes and during the development of Estate Development Plans.
>
> For specific developments, holistic impacts of a development on a precinct or suburb can be considered in both merit and impact track applications. For example, section 120(b) of the *Planning and Development Act* requires the decision-maker on a development application to consider the suitability of the land where the development is proposed to take place for a development of the kind proposed. Also, section 120(g) requires the decision-maker to consider the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts. These provisions allow the holistic impact of a development on the surrounding area, precinct or suburb to be considered. Relevant examples include the consideration of the potential traffic impacts of a development on intersections within a suburb or how the reflectivity of glass used in a development may impact surrounding areas.[628]

CONSIDERATION OF IMPACTS DURING CONSTRUCTION

7.162 Submitters identified that during construction there are often issues with parking, vehicle and pedestrian access. It was noted that these issues had been significant in Turner where there have been several developments occurring concurrently, many in the same street.[629]

7.163 Residents told the Committee that these issues have included:

> • workers parking under 'no parking' and 'no standing' signs — this has been quite dangerous for residents endeavouring to go about their day-to-day activities and having trouble with access to streets;
>
> • workers parking on surrounding nature strips — this does incredible damage to the roots of sometimes very old and valuable trees as well as inconvenience to residents who are required to maintain their nature strips;
>
> • footpaths being closed, often with signs which advise pedestrians to use 'other' footpath — even though there is no other footpath to use!
>
> • footpaths being closed by vehicles (including trucks) parked on them — this presents ridiculous challenges for those who are pushing prams or those who are less agile in movement than those who have blocked the path;

[628] *Answer to Question on Notice No 16,* answered on 2 October 2018.
[629] Kelly and Appleton, *Submission 60,* p. 3.

> • builders/workers not checking traffic before crossing roads, seemingly because they are wearing high viz clothing;
>
> • closure (or reduction to one lane) for vehicles — this should never be undertaken during peak hour and there should be checks to ensure that it doesn't occur; and
>
> • deliveries of seemingly huge components to building sites on trucks which simply will not fit in the street.[630]

7.164 Damage to verges and street trees by the vehicles was of particular concern:

> Although the DA requires builders to protect the street trees immediately in front of their development, it is totally silent on the protection of all other street trees in the vicinity of their development…Consequently, a developer remains completely oblivious to, and totally unaccountable for damage caused to the root systems of magnificent trees in the vicinity of their development by the dozen or more trade vehicles parked on verges. The developer is only responsible for the one or two trees listed on his DA. Developers are not held accountable for, nor required to refurbish, neighbouring verges they may have destroyed, only for the verge cited on the DA.[631]

7.165 It was felt that:

> Builders and developers effectively have immunity from requirements that prohibit. parking on verges, storing bricks and other materials on verges. Heavy machinery and trucks parked next to street trees result in inadequate protection for trees and verges, resulting in compaction of soil that will be det1imental to the long term health of trees.[632]

7.166 The Campbell Community Association also felt that the 'TCCS should be required to physically inspect the affected site' and that 'Traffic Management Plans should be mandatory and capable of being enforced during construction.'[633]

7.167 It was also suggested to the Committee that:

> …all DAs should be required to provide a parking and access plan for trade and heavy vehicles for the full term of the building development. The Planning Authority, in its approval process, should then incorporate the potential impact of adjacent simultaneous or overlapping developments, so that the overall impact of all vehicle movement, access and parking is considered and required to be mitigated by the developer(s) as a basic DA component.[634]

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[630] Helen M Goddard, *Submission 2*, p. 3.
[631] Kelly and Appleton, *Submission 60,* p. 4.
[632] Inner South Canberra Community Council, *Submission 44*, p. 5.
[633] Campbell Community Association, *Submission 18*, p. 2.
[634] Kelly and Appleton, *Submission 60,* p. 4.

7.168 Construction noise and disruption was particularly an issue when permissible commencement times were not being adhered to:

> …it is frequently the case that developers arrange for building materials or even worse, large excavation vehicles, to be delivered to the development site well before the commencement hour of 7:00am. The noise of the delivery vehicle and the unloading process disturbs the entire street and makes a mockery of the supposed 7:00am start time…The ACT Planning Authority should apply penalties to developers not adhering to required working hour limitations.[635]

7.169 With developments occurring so close to each other, it was suggested that development 'should be staggered to avoid excessive loss of amenity and to lessen traffic congestion.'[636]

7.170 Evidence to the Committee also indicated that insufficient residential parking for apartments was also a concern, especially in regard to visitor parking. With limited and restricted street parking available in older suburbs, combined with the influx of construction-related vehicles, local residents have encountered issues with their visitors not being able to find a park and traders have felt the effects of potential customers not being able to find a park.[637]

7.171 With the aforementioned matters causing concern for residents in areas undergoing development, it was alleged that 'construction fatigue' was starting to become a serious issue:

> …whereby residents are subjected to many simultaneous developments or a stream of developments. When this occurs residents will become irritated and human nature is such that residents will find anything to complain about just to stop another year of noise or inconvenience. What I would like to see is planners looking at the whole suburb and even outside the suburb in an attempt to reduce the number of simultaneous developments.[638]

COMMITTEE COMMENT

7.172 The Committee notes that the concerns raised above are not just the relevant to Canberra 'NIMBY' neighbours. Rather, it is a national problem. For example, the Victorian Government has recently released for consultation proposed planning requirements to try to address the same problem for apartment developments in low-rise residential developments.[639]

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[635] Kelly and Appleton, *Submission 60,* p. 6.

[636] Michael Nash, *Submission 6.*

[637] Kelly and Appleton, *Submission 60,* pp. 6-7; Mr Moore, *Transcript of Evidence*, 10 September 2018; Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 3.

[638] Helen M Goddard, *Submission 2*, pp. 3-4.

[639] Better Apartments in Neighbourhoods Discussion Paper 2019, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/6915/6463/0112/BetterApartmentsInNeighbourhoods_DiscussionPaper_-_Public_Consultation_Release_1.8.19.pdf. Accessed 10 February 2020.

Recommendation 43

7.173 The Committee recommends that the Directorate, in conjunction with the Transport Canberra and City Services Directorate, the Environmental Protection Authority and Worksafe ACT, undertake random audits of construction sites and enforce traffic management plans; ensure safe pedestrian passage; and enforce working hours and noise levels.

Recommendation 44

7.174 The Committee recommends that for developments in suburban residential areas, construction parking and access plans for trade and heavy vehicles are submitted as part of a DA, and that these plans remain accessible on the Directorate's website until construction is complete.

Recommendation 45

7.175 The Committee recommends that for developments in suburban residential areas, plans for the protection of the verge and street trees during construction within a certain range of the development are submitted as part of DA, and that these plans remain accessible on the Directorate's website until construction is complete.

CONSIDERATION OF THE IMPACTS OF DEVELOPMENTS ON AMENITY AND THE ENVIRONMENT

7.176 Gregory Lloyd in his submission to the inquiry indicated that there seems to be two views on the assessment process. One where the process is seen 'as a mechanistic component in confirming that a proposal does not breach zoning or planning laws,' the other where the process is seen as 'contributing to the broader fabric of planning to ensure the spaces we live in improve the life and amenity of residents and businesses.'[640]

7.177 Mr Lloyd indicated that he felt that these two perspectives meant that:

> 'DAs are at a crossroads: is the land the owner's to do with as they wish within existing law, or is the partial right of the community to guide continued use of land after leasing and to prevent undesirable development.'[641]

7.178 Gregory Lloyd indicated that his view was that DAs 'should be assessed, in part, for the value they bring to the community' and that 'while a particular development may be strictly lawful,

[640] Gregory Lloyd, *Submission 26.*
[641] Gregory Lloyd, *Submission 26.*

it may not be considered beneficial by residents or users, and it is appropriate for the government to consider this as grounds to reject or amend an application.'[642]

7.179 In her submission, Jane Goffman claimed that not only is the amenity of residents and users not being considered adequately, but neither is the long term effects of inappropriate development on the environment:

> The adverse social, economic, and environmental impacts of many of the DAs we are getting are far greater than they should be. The proportion of new housing stock built in the ACT in the last decade for very large houses and very profitable multi-units with excessively large footprints is troubling because it shows there is a runaway market for products that neither address affordability nor prepare us in the long term for climate change. We are channelling vital resources into grossly inefficient stock that creates problems that were foreseeable and avoidable, such as future heat islands, higher fire and flood risks, destruction of open space and loss of community facilities and habitat, when all along we knew better.[643]

7.180 The Griffith Narrabundah Community Association echoed this sentiment:

> We do not need buildings that leak or residents that receive no sun. We need buildings that are consistent with the zero emissions target of the government and buildings that are energy efficient and space for the urban forest to prosper and green spaces for recreation.[644]

7.181 It was also noted that even at a basic level the adequacy or otherwise of existing infrastructure to deal with the increased population density and new developments does not appear to be something that is being addressed:

> …no assurances are provided to residents that appropriate measures have been taken to evaluate the capacity of the existing infrastructure such as roadways, storm water and sewage drains, to accommodate the additional demands placed on them from additional developments.[645]

7.182 Planning approvals on RZ2 blocks was of particular concern for community groups and residents in older suburbs due to what they saw as negative effects on the local environment and residential amenity:

> To accommodate more than two dwellings on an RZ2 block generally necessitates completely clearing the site of all established vegetation, including large trees, and removes the habitat of all ground dwelling fauna. Little obligation is placed on

[642] Gregory Lloyd, *Submission 26.*
[643] Jane Goffman, *Submission 27*, p. 2.
[644] Griffith Narrabundah Community Association, *Submission 64*, p. 1.
[645] Michael Nash, Submission 6.

> developers to leave adequate permeable surfaces on a block to allow shade-giving vegetation to be re-established.[646]

7.183 Campbell Community Association noted that it was 'commonplace for whole sites to be cleared particularly in RZ2 areas where whole blocks are cleared to accommodate multiple units.'[647]

7.184 Both Combined Community Councils of the ACT and Friends of Hawker Village spoke of the heat island effect that usually resulted from this site clearing:

> Multi-unit development in RZ2 generally results in large areas of hard surfaces that absorb heat, reduce infiltration and increase runoff. The inevitable consequence is an increase in the heat island effect compared with traditional Canberra suburbs, a heavier burden on the stormwater system and a greater incidence of flooding. Plot ratios need to be amended in RZ2 areas to 50% total coverage by buildings and driveways and other impermeable or heat-retaining surfaces. Depending on block shape, one rear or side setback should be at least six metres to allow for the retention or planting of large trees and shrubs.[648]

7.185 In the context of the above issues a number of submitters expressed concerns about the number of dwellings on RZ2 blocks, particularly when 'adaptive housing' was used as 'an excuse for overdevelopments:'[649]

> Developers are obtaining approval to construct the maximum number of permitted dwellings on RZ2 blocks solely on block size regardless of multi dwelling code / objectives and community consultation. [and] In addition, Builders are using legal loopholes to increase plot ratios by claiming new dwellings will be for Adaptable Housing.[650]
>
> We believe that the number of dwellings is a simplistic approach to assessing the suitability of a block for a particular proposal.[651]

7.186 Mrs Davison noted that even when a development complies with the rules it doesn't mean that it is a suitable development for a site. She specifically noted the instances of development under RZ2:

> The RZ2 says that if a block is this big you divide it by a certain number and it equals a certain number, and if it says you can put eight there, you can put eight there. That does not mean that eight fit, and it does not mean that that is then going to meet all

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[646] Michael Nash, *Submission 6.*
[647] Campbell Community Association*, Submission 18*, p. 2
[648] Friends of Hawker Village, *Submission 11*, p. 9; Combined Community Councils of the ACT, *Submission 21*, p. 2.
[649] Friends of Hawker Village, *Submission 11*, p. 11.
[650] Campbell Community Association*, Submission 18*, p. 2
[651] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 3.

> the zone objectives. While they meet some of the rules, to do that they might have to cut down every tree on the block, and pull out every shrub and every bit of vegetation, and replace it with hard surfaces. So what they are proposing to put back does not meet all the other—
>
> It does not fit the rules. While it might fit in size, no site visits are done by anybody to have a look and say, "Is this is a suitable site to put eight dwellings on?"[652]

7.187 Consequently the amount of Open Space was also an issue on the RZ2 blocks, with open space on many sites comprising 'mainly the mandatory setbacks' and landscaped surfaces often being later changed to hard surfaces.[653] The Committee was also told that:

> The current plot ratio and side and rear setbacks in RZ2 under the MUHDC do not facilitate adequate green space. The plot ratio does not account for driveway length and configuration. Current rear and side setbacks, along with the 50% plot ratio for buildings allow only minimal greenery. Consequently, densification is resulting in loss of green space sufficient to support large shade trees.[654]

7.188 In response to a Question on Notice about the existing rules in relation to the percentage of plantable areas, the Directorate stated that:

> Planting Area is defined in the Territory Plan as an area of land within a block that is not covered by buildings, vehicle parking and manoeuvring areas or any other form of impermeable surface and that is available for landscape planting. The Territory Plan also specifies what provisions apply to residential development in respect to planting area. For single dwelling development this depends on the size of the block (i.e. large block:-- greater than 500m squared , mid-sized block - 250m squared and compact block- less than 250m squared). For multi-unit development, planting area is dependent on the zone.[655]

PROCESSING TIMES

7.189 The *Planning and Development Act* 2007 specifies timeframes for decisions to be made on DAs. The statutory timeframes are:

- 20 working days from date of lodgement for code track applications; or

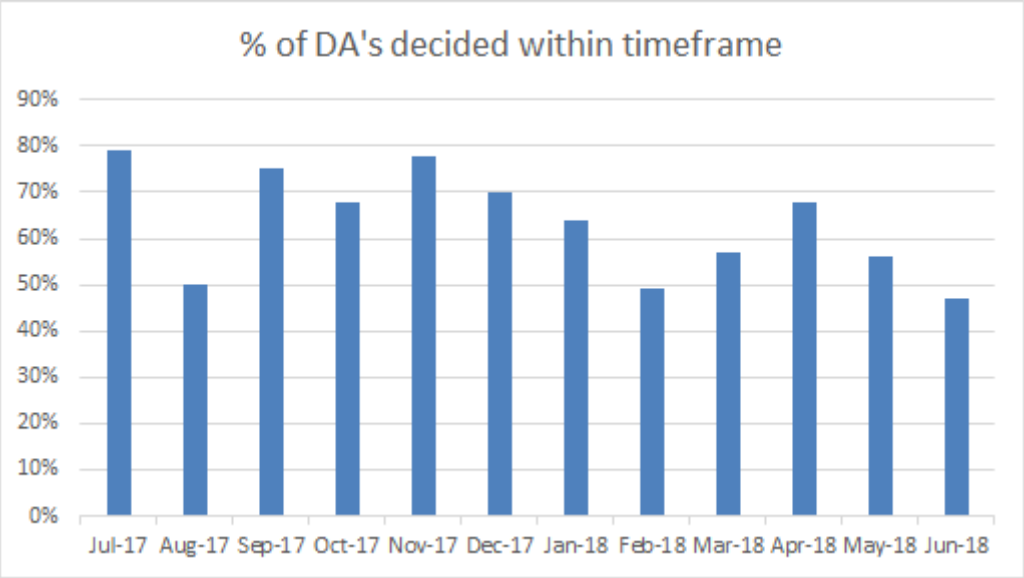
[652] Mrs Davison, *Transcript of Evidence*, 10 September 2018, p. 67.
[653] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 3.
[654] Friends of Hawker Village, *Submission 11*, p. 9.
[655] *Answer to Question on Notice No 13,* answered 2 October 2018.

- 30 works days from date of lodgement for merit and impact tracks if no representations are received, and 45 days from date of lodgement when representations are received. [656]

7.190 The Authority seeks to make a decision on all DAs with the statutory timeframe, but where some applications raise complex issues, more detailed consideration must be given before an application can be approved.[657]

7.191 The ACT Planning and Land Authority maintains statistics on the number of development applications lodged, the number decided and statistics on decisions against statutory timeframes.

7.192 In 2017-2018 the percentage of DAs decided within the statutory timeframe was as follows:[658]



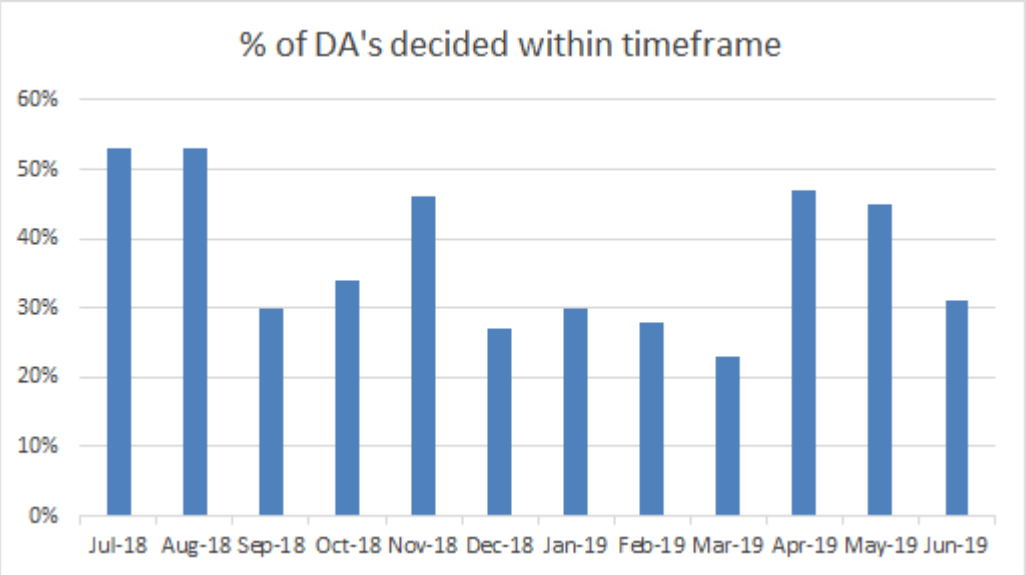
7.193 Below are the percentage of DAs decided within the statutory timeframe for 2018-2019:[659]

[656] ACT Government, 'Development Applications', https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals/development-applications, accessed 2 October 2019.

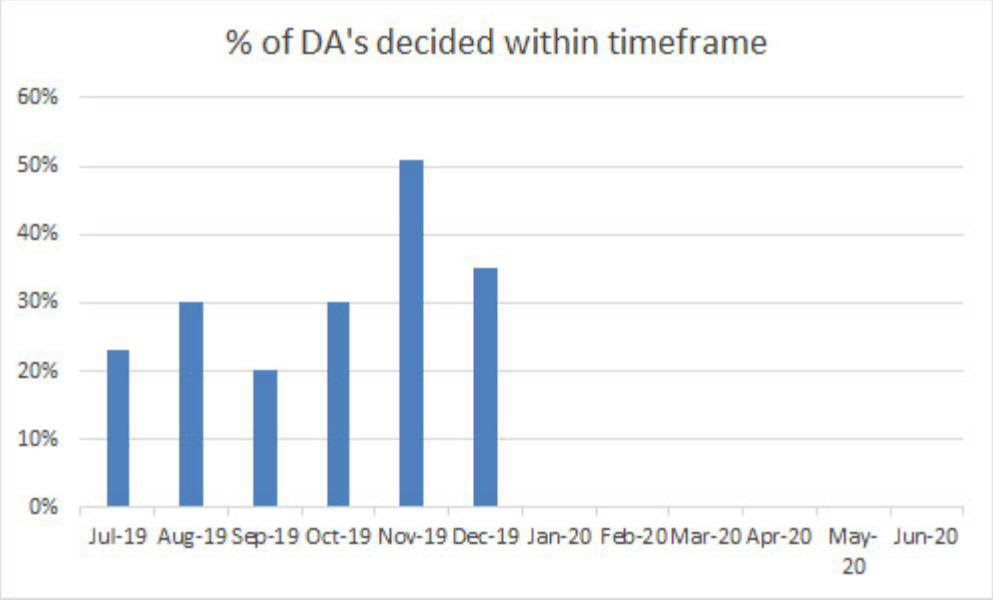
[657] ACT Government, *Submission 42*, p. 9.

[658] Environment, Planning and Sustainable Development Directorate – Planning, 'Development Applications (DA) Statistics 2017-18,' https://www.planning.act.gov.au/development_applications/development-application-performance/development-applications-da-statistics-2017-18. Accessed 10 February 2020.

[659] Environment, Planning and Sustainable Development Directorate – Planning, 'Development Applications (DA) Statistics 2018-19,' https://www.planning.act.gov.au/development_applications/development-application-performance/development-applications-da-statistics-2018-19. Accessed 10 February 2020.



7.194 The second graph identifies a significant drop in the percentage of DAs decided within the statutory timeframe, a trend that appears to be continuing into 2019-2020 as per the diagram below:



7.195 In his opening statement to the Committee, the Minister acknowledged that there are challenges facing the ACT Planning and Land Authority:

> …the 2017-18 financial year the authority saw a 25 per cent increase in the number of development applications and estate development plans lodged…there has been an increase in DAs in town and suburban centres. That has led to increasing community interest in developments. The division has also seen an increase in the

> complexity of the development applications being submitted as mixed use developments are proposed for the city, town and local centres.[660]

7.196 During the Estimates hearings in 2019 the Directorate informed the Estimates Committee that the reasons for the backlog of DAs (which had peaked in October 2018) related to:

> …the quantum of DAs, the scale of DAs and the complexities, but also the level of community interest in DAs we have found. That all contributed to it. The last two, the complexity and community interest, mostly related to infill development. There are now a greater number of people affected by these more complex DAs and there is a greater impact on infrastructure that we need to be more carefully concerned about because it is existing infrastructure that needs to be either upgraded or accommodated within development.[661]

7.197 There was near consensus across all sectors of the community and industry who provided evidence to the Committee that these processing times for DAs were not optimal.[662]

7.198 The KBRG noted that:

> Statutory DA processing times do not seem to bear much relation to reality. Given this, it is not clear what the purpose of the statutory times is, apart from performance reporting and giving the applicant an appeal right if the DA has not been determined within the set time (a right which seems to be rarely, if ever, exercised).[663]

7.199 The PIA submission indicated that while 'records indicate that timeframes are met about 75-80% of the time' it is clear 'they are rarely met for more significant development proposals.'[664]

> Applicants in the ACT do not really have a choice other than to wait for an ACTPLA decision. The option to appeal to ACAT does not assist (unlike the comparable option in NSW to appeal to the Land & Environment Court). ACAT's track record is to take longer than ACTPLA to consider, determine and report on a DA.[665]

7.200 The Property Council noted that there were delays encountered throughout the process particularly when changes or additional information is requested by the Authority and there is a restarting of the clock.[666]

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[660] Minister Gentleman, *Transcript of Evidence,* 13 September 2018, p. 141.

[661] Mr Cilliers, *Transcript of Evidence*, 26 June 2019, pp. 896-899.

[662] See for example, Planning Institute of Australia, *Submission 29*; Property Council of Australia, *Submission 49*; Canberra Business Chamber, *Submission 45*; National Trust of Australia (ACT), *Submission 23;* Woden Valley Community Council, *Submission 54*; Housing Institute Australia, *Submission 47*; Kingston and Barton Residents Group, *Submission 39.*

[663] Kingston and Barton Residents Group, *Submission 39,* p. 3.

[664] Planning Institute of Australia, *Submission 29*, p. 7.

[665] Planning Institute of Australia, *Submission 29*, p. 7.

[666] *Transcript of Evidence*, 10 September 2018, p. 27.

7.201 Whilst they acknowledged that processing times are a 'shared responsibility with industry with respect to responsiveness' they noted that the 'ability for a conversation between the assessing officer and the applicant regarding questions or clarifications and consistency between applications' would avoid many delays.[667]

7.202 The Committee was told that delays for compliant DAs often exceed twelve months for larger developments and six to twelve weeks for simple smaller developments.[668]

7.203 The PIA 'Other Planners workshop' felt that:

> …when lengthy timeframes were involved, the community felt 'exhausted' and somewhat removed from the overall process. A quicker timeframe is better for applicants, proponents and the community in general.[669]

7.204 The Property Council noted that not only did the lengthy delays impact on development, the associated 'uncertainty of not knowing when' a development assessment has passed through the various stages of the process or even when it will be completed impacted significantly on developers.[670] The Australian Institute of Architects (AIA) noted that these 'cost and time implications for homeowners, small businesses, organisations and developers' also has the 'potential to impact on development in the Australian Capital Territory' as a whole.[671]

7.205 The Canberra Business Chamber and others noted that 'delays in planning approvals create an economic cost to the community and results in greater project costs and reduced returns associated with increased holding costs associated with the land.'[672]

7.206 The AIA told the Committee:

> There are stipulated approval times that are advertised on the directorate's website as to how many weeks they will take to provide a determination for a DA development. What happens if these are delayed? There are site teams; there are whole project teams. Through to the DA process, there are always discussions with the assessing officers; and especially for very large projects, there is often a lot of discussion about in-principle approval and in-principle support of a development. In terms of the risk assessment given to a particular project that may be in the approval process, there is already a level of programming and forward planning that goes into the site team that would then, in turn, be looking to start construction on that project. On any construction site, there are always going to be lead times for ordering materials, getting cranes on site and booking in trades. All of those sorts of things are just

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667 Property Council of Australia, *Submission 49*, p. 8.

668 *Transcript of Evidence*, 10 September 2018, p. 27; Australian Institute of Architects, *Submission 37.*

669 Planning Institute of Australia, *Submission 29*, p. 8.

670 Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 27.

671 Australian Institute of Architects, *Submission 37,* p. 2.

672 Canberra Business Chamber, *Submission 45*, p. 2; Australian Housing and Urban Research Institute, *Submission 38*, p. 6; Mr Leeson, *Transcript of Evidence*, 10 September 2018, p. 43.

> ongoing things that slip because of DA approval processes going past their stipulated approval time frames.[673]

7.207 Industry groups told the Committee that this in turn 'has an effect on building quality and design'[674] with the Property Council advocating that innovation also suffered when projects were delayed:

> There is great desire to be innovative. That requires flexibility in the planning system. It also requires a level of trust with community. In terms of the approvals process and the impact that has, as I said, time is money. Sometimes what happens in developments is that a developer has great ambitions for a particular project, but because of time delays in approvals and community engagement, and then potentially third-party appeals delays, you get designs which are, to be frank, dumbed down at the end of the process, that perhaps were not as great a quality as they could be. And then designs are wound back a bit in order to make up that money somewhere, to make up that time that has been lost.[675]

7.208 In contrast to industry views, the Griffith Narrabundah Community Association supported by the ISCCC suggested that 'the DA process, particularly for large projects may take several months, but if what is to be built will last for 50 or more years, it is important that good outcomes are achieved.'[676]

IMPACTS ON DEVELOPMENT APPLICATION ASSESSMENT TIMEFRAMES

7.209 In their submission Australian Housing and Urban Research Institute (AHURI) noted that their research has shown that delays in the development assessment track often stem from:

- systems which take development decisions to a political (councillor) level;
- lack of council staff;
- referrals to state government agencies; and
- requirements for consultant studies (e.g. for wildlife, bushfire, or Indigenous heritage) even when the land had already been zoned as residential.[677]

7.210 Evidence suggested that the following issue also impacted on DA processing timeframes:

- One size fits all approach;
- Completeness Check process; and

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[673] Ms Leong, *Transcript of Evidence*, 10 September 2018, p. 46.

[674] Canberra Business Chamber, *Submission 45*, p. 2; Australian Housing and Urban Research Institute, *Submission 38*, p. 6; Mr Leeson, *Transcript of Evidence*, 10 September 2018, p. 43.

[675] Ms Cirson, *Transcript of Evidence*, 10 September 2018, p. 27.

[676] Griffith Narrabundah Community Association, Submission 64, p. 1; Inner South Canberra Community Council, *Submission 44*, p. 1.

[677] Australian Housing and Urban Research Institute, *Submission 38*, p. 6.

- Inadequate resourcing.

ONE SIZE FITS ALL APPROACH

7.211 The one size fits all approach was an issue for the AIA, particularly in relation to amended DAs:

> There is clear information regarding statutory timeframes for DAs. However, the one size fits all approach to statutory timeframes is neglected when the process goes beyond the standard development application. When an amendment to a DA is lodged or further information is required, no timeframes are applicable. [678]

7.212 In their submission the PIA noted that:

> The Amendment process should be faster and more streamlined. For many developments there are changes required, for example due to the availability of materials during construction, so Amendments should be recognised as an integral part of the development process.[679]

7.213 In this context the PIA 'Government workshop' suggested that 'there should be different timeframes applied to different forms of development' and highlighted the situation with respect to DAs in Impact Track:

> There needs to be a separate timeframe for Impact Track DAs requiring additional environmental assessment or referral to the Commonwealth. The overall EIS process takes 6 to 12 months, provided there has been sufficient early liaison between the applicant/proponent and ACTPLA early in the process. At the moment there is a timeframe of 30 working days if the DA receives no submissions during public notification, and 45 working days if submissions are received. In practice the timeframes are often 90 days for major projects / complex DAs and about 30 days for minor DAs.[680]

7.214 The PIA 'Government workshop' suggested the following would be appropriate:

- Minor DAs (10 to 15 working days), with reduced public notification;
- Commercial/ Industrial not too complex (30 to 45 days);
- EDPs and major developments (e.g. Panel) (90 days).[681]

COMMITTEE COMMENT

7.215 The Committee agrees with the evidence provided by the PIA in that it is unreasonable to expect the assessment of a large industrial complex or a mixed use precinct with hundreds of

[678] Australian Institute of Architects, *Submission 37,* p. 2.
[679] Planning Institute of Australia, *Submission 29*, p. 8.
[680] Planning Institute of Australia, *Submission 29*, p. 8.
[681] Planning Institute of Australia, *Submission 29*, p. 8.

shops and apartments to be completed in the same length of time as a granny flat or change of business signage.

7.216 The Committee is of the view that moving to tiered assessment timeframes would provide better certainty to applicants and would reduce unnecessary and unhelpful pressure on Directorate staff.

Recommendation 46

7.217 The Committee recommends that the allocated processing time for Merit and Impact Track Development Applications is modified so that the time for assessment reflects the complexity of the development.

COMPLETENESS CHECK PROCESS

7.218 A number of submitters highlighted concerns with the length of time spent on the completeness check.[682] For example the AIA told the Committee that:

> …some of the inefficiency regarding time frames points back to problems in communication and overly complex systems. For example, the current completeness check has become an additional review period that is outside the statutory DA review period and leads to double handling.[683]

7.219 Allan Spira expressed the view that as an Architect his experience with the DA process has led him to believe that 'it does seem to take much too long for the initial documentation compliance checks before payment can be made and the actual assessment process begins.'[684]

7.220 It was noted by the Committee that industry groups generally found the completeness check was moving in the semi-assessment direction advocated for by various stakeholders earlier in this chapter.

7.221 The PIA 'Consultant workshop' noted that while the completeness check process:

> …should be a quick review of the adequacy of documentation, it has evolved into an extended administrative and quasi-assessment process. The timeframes to achieve DA lodgement are often 3-4 weeks, which is extended if the documentation includes a simple error. Unfortunately, when the error is corrected, the DA goes through the completeness check process again resulting in more significant delays (when it should take only a few minutes for someone to confirm the error has been corrected, or the missing document provided). This results in an initial frustration for applicants and

[682] See for example, Planning Institute of Australia, *Submission 29*; National Trust of Australia (ACT), *Submission 23;* Kingston and Barton Residents Group, *Submission 39;* Australian Institute of Architects, *Submission 37*.

[683] Mr Leeson, *Transcript of Evidence*, 10 September 2018, p. 43.

[684] Allan Spira, *Submission 25*, p. 1.

> adds to pressure on the assessment officer. The timeframe for the initial completeness check is not part of the statutory timeframe for DAs,…so extensive delays at this point in the DA process go unrecorded but add to the overall development costs for the proponent. In some cases, the completeness check failure can be for reasons not related to the assessment of an application.[685]

7.222 Whilst acknowledging the benefits of the completeness check the AIA suggested that the completeness check process could work concurrently with the lodgement and approval processes.[686] They observed that:

> At the moment it appears that there is a separate gateway team that reviews the documents that have been lodged for completeness, to check whether they are complete to then proceed to the application process. It would appear that the two processes could work concurrently with each other. In that way, the gateway team could also discuss with the assessing officer whether it is worth failing a completeness check because a certain document is missing or whether it is worth just making that phone call and asking for that information.[687]

7.223 The AIA also suggested that:

> Further transparency should be provided on the timeframes for the completeness check which has become an additional review period that is outside the statutory DA review period. During the completeness check period, no assessing officer is allocated to the application so there is no way to appropriately communicate about the lodged DA.[688]

7.224 The Property Council agreed with this perspective and noted that 'many delays could be avoided by communication outside of the "rejection track" and seeking clarification direct from the applicant.' However, they were adamant that 'the completeness check should not form part of the assessment process.'[689]

COMMITTEE COMMENT

7.225 The Committee has made recommendations in relation to the completeness check process earlier in this chapter.

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[685] Planning Institute of Australia, *Submission 29*, p. 6.
[686] Ms Leong, *Transcript of Evidence*, 10 September 2018, p. 47.
[687] Ms Leong, *Transcript of Evidence*, 10 September 2018, p. 47.
[688] Australian Institute of Architects, *Submission 37,* p. 2.
[689] Property Council of Australia, *Submission 49*, p. 8.

INADEQUATE RESOURCING

7.226 Inadequate resourcing was not only an issue raised in relation to the quality of assessment but also in relation to DA processing times.[690]

7.227 It was suggested by the PIA 'Consultant workshop' that increased resourcing of ACTPLA would improve the percentage of DAs achieving the timeframe' and that the formation of a specific assessment team to deal with Major Projects would be advantageous.[691]

7.228 Whilst they did not support the formation of a 'siloed' team for large developments the PIA 'Government workshop' acknowledged that 'significant additional support staff are required to assist, particularly with document and plan management under the e-Development system. They also indicated that the 'key issue' impacting on processing times was the proportion of time assessment planners spent actually assessing DAs, rather than undertaking administrative tasks.'[692]

7.229 The Property Council told the Committee that:

> One of the anecdotal pieces of feedback is that sometimes the bigger projects take up a lot of resources…So there are quite lengthy delays for simpler projects because the staffing resources and expertise needed on those big, complex residential commercial developments really cause delays.[693]
>
> We have been advocating for more resources in planning, but also around ensuring that those planning officials are experienced and have the skills required at a time of renewal. Ultimately, that comes down to resourcing.[694]

7.230 The MBA emphasised the need for adequate resourcing in the context of increased population growth:

> With the growth of the ACT over recent years (at above Australian average population growth rates), the level of resourcing in the Environment, Planning and Sustainable Development Directorate has effectively fallen behind leading to a current severe shortage of resources. Additional resources in the development assessment teams should be urgently addressed.[695]

7.231 The HIA also advocated that with increased demand for housing that there is concern that 'the consequences of an underperforming approvals process is not being recognised, and the

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[690] See for example, Planning Institute of Australia, *Submission 29*; Housing Institute Australia, *Submission 47*; Master Builders Association, *Transcript of Evidence*, 10 September 2018; Australian Institute of Architects, *Transcript of Evidence*, 10 September 2018.

[691] Planning Institute of Australia, *Submission 29*, p. 7.

[692] Planning Institute of Australia, *Submission 29*, pp. 7-8.

[693] Ms Cirson, *Transcript of Evidence*, 10 September 2018, p. 26.

[694] Ms Cirson, *Transcript of Evidence*, 10 September 2018, p. 26.

[695] Master Builders Association of the ACT, *Submission 48*, p. 3.

commensurate level of resources therefore being provided by government is less than adequate.'[696]

7.232 In response to a Question on Notice in regard to the current staffing numbers and levels considering development applications in the Environment, Planning and Sustainable Development Directorate, the Directorate stated that:

> The Planning Delivery Division within EPSDD is the key division responsible for assessing development applications. Officers within the Planning Delivery Division perform statutory functions under delegation from the planning and land authority, who is also the Chief Planning Executive. The Planning Delivery Division is structured differently to five years ago, making an overall comparison difficult, however, staffing levels have remained generally consistent.
>
> The Division includes the following teams, with current FTEs in brackets:
>
> DA Gateway (8 FTEs)
>
> Merit Assessment and Deed Management (26.85 FTEs)
>
> DA Leasing and ACAT Coordination (9.71 FTEs)
>
> Impact Assessment and Business Improvement (8.83 FTEs)

(Note: partial FTEs reflect part-time arrangements for some staff)[697]

7.233 During the Estimates hearings in 2019 the Directorate told the Estimates Committee that to counter the backlog of DAs to be assessed they implemented a 'stage assessment process' in August 2018; implemented target overtime sessions; engaged additional staff on short-term contracts; revised assessment templates and revised the notices of decision.[698]

7.234 The Directorate informed the Estimates Committee that the stage assessment process no longer meant that DAs were assessed by a single officer:

> Where you previously had a single officer, now you have at least three people. An officer can handle more than one stage if they want to, but there are probably at least three people looking at a DA, and it could be up to six people looking at a single DA. So it is not a single person's call as to what the outcome of a DA would be. There is still a single delegate signing off on it, but it is more a team effort.[699]

[696] Housing Institute Australia, *Submission 47*, p. 1.
[697] *Answer to Question On Notice No 9,* answered 9 October 2018.
[698] Mr Cilliers, *Transcript of Evidence*, 26 June 2019, pp. 896-899.
[699] Mr Cilliers, *Transcript of Evidence*, 26 June 2019, pp. 896-899.

7.235 The Directorate went on to explain that the stage assessment process entailed six stages which were based on the 'statute considerations and the steps in the *Planning and Development Act'*:[700]

> The first stage would be pre-assessment and review. Fundamentally, we ask the question: is the land suitable? That is a question we have to ask in terms of the act; it goes back to not just permissibility but zone objectives and those sorts of things. The second stage is basically consideration of entity advice, again a requirement under the act. The third stage is for consideration of representations. The fourth stage is the technical assessment against the Territory Plan; we actually look at the drawings, assess them against code requirements and see whether they comply.
>
> The fifth stage is a sort of in-between stage, what we call the preliminary decision-making stage. Before we start drafting and making a decision, we have a senior officer look at the DA: take a step back and look at all the previous stages, what the recommendations were and what the decision should be. That stage also gives you the opportunity to escalate it to the major projects review group or to the landscape review panel if there are any issues in relation to that.
>
> The last stage is the drafting of the actual notice of decision and the final decision by a delegate. In addition to that, we have bundled our pre-lodgement services with our gateway team. They undertake a range of duties: things like inquiries, pre-lodgement advice, pre-application meetings and completeness checks. I have also introduced the role of coordinator. This particular person's role is to make sure that a DA keeps on progressing through those stages. Then there is a small team responsible for post-decision review. They are things like ACAT reviews and those sorts of things. [701]

7.236 Further to this they spoke about the reasons for undertaking such an approach, including the volume of work; the need for consistency in decision making; the need to identify pressure points and trends, and vulnerable DAs that can be handled more efficiently; and the wellbeing of staff.[702]

7.237 Whilst there have been a number of positives, the Directorate also told the Estimates Committee of the challenges they have had to face under the new process:

> The challenges we have with the stage assessment process are largely in relation to communication. Applicants or industry were used to contacting a single DA assessing officer. Now, it is very difficult. What am I doing about that? We have centralised the communication part with our gateway team, and we currently have two duty planners at any stage. This has led to what I referred to earlier: the need for a coordinator to maintain a level of fairness. The way we are dealing with overdue DAs is to deal with

[700] Mr Cilliers, *Transcript of Evidence*, 26 June 2019, p. 896.
[701] Mr Cilliers, *Proof Transcript of Evidence*, 26 June 2019, pp. 896-897.
[702] *Proof Transcript of Evidence*, 26 June 2019, pp. 896-898.

> the old ones first; obviously that leads to some complaints from people whose DAs are getting older while we are dealing with them. Another challenge is dealing with amendment applications. We discussed that earlier. Something else is that the quality of applications and documentation we receive still, in some cases, leaves—[703]

7.238 The Directorate also noted that they had obtained feedback on and outcomes of the new process which they provided to the Estimates Committee:

> Let me go to the feedback we have. Let me go to proponents that did make a change, particularly proponents who, as Mr Cilliers said, were used to ringing up the single assessing officer, to the point where they were sometimes ringing the assessing officer so often that they had no time to do any assessment because they were kept talking to the one proponent. Centralising those phone calls has allowed the assessors to work in teams on each of the stages. I think, too, you will have seen in the budget that the government has made a major change to staffing, so we will be able to put on an initial six new assessing officers out of this budget. And we have done a change to the fees so that it will be, in effect, industry funded.[704]
>
> We keep a close eye on the success of our stage assessment process because it is a new thing. In October, 462 DAs at that given point were under assessment. We are currently down to the 350 mark. It does show that it works. We would like to be around the 200 to 240 mark for it to be a healthy level of work.[705]
>
> The other thing that we have heard, without wanting to pre-empt the outcomes of the other committee looking at DA engagement processes, is that the government has also funded us an additional engagement officer to help the DA assessment team to work with both industry consultation and community consultation. So we are managing that.[706]
>
> We have seen a significant investment—nearly $4 million over four years—by the government to not address the backlog but really keep up with that. As I said, the city is booming, and we need strong quality assessment teams to deliver a quality product to our community.[707]

7.239 During the Estimates hearings the MBA expressed their support for the budgeting of six new development assessment staff in the 2019-20 Budget and encouraged the continued growth of development assessment staffing numbers to match the growth rate of the city.[708]

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[703] Mr Cilliers, *Proof Transcript of Evidence*, 26 June 2019, pp. 897-898.
[704] Mr Rutledge, *Proof Transcript of Evidence*, 26 June 2019, p. 898.
[705] Mr Cilliers, *Proof Transcript of Evidence*, 26 June 2019, p. 898.
[706] Mr Rutledge, *Proof Transcript of Evidence*, 26 June 2019, p. 898.
[707] Mr Rutledge, *Proof Transcript of Evidence*, 26 June 2019, p. 898.
[708] Mr Hopkins, *Proof Transcript of Evidence,* 14 June 2019, pp. 49-50.

COMMITTEE COMMENT

7.240 The Committee notes that additional funding was provided in the 2019-20 Budget, and that this initially led to an improvement in approval times. However, the Committee is deeply concerned that the improvements rapidly stalled and approval times remain well above the acceptable standard.

7.241 The Committee also notes with concern that the 2019-20 Budget does not appear to contain additional funding for DA assessment resources in future years, despite likely growth in development activity over time.

Recommendation 47

7.242 The Committee recommends that the ACT Government continue efforts to improve Development Application processing times, and urgently consider a further funding increase to enable the Directorate to meet the demands inherent in future increases in development activity in the ACT.

INCREASED FEES/PREMIUM FOR FAST-TRACK

7.243 It was noted in their submission that 'AHURI research suggests that most developers are willing to pay development application fees but they would be willing to pay more if the applications were processed more quickly.'[709]

7.244 The PIA concurred with the observation, indicating in their submission that:

> …developers/applicants for significant development proposals would be willing to pay a premium to ensure more direct contact with assessment officers, quick advice in relation to emerging issues with the DA and a more timely decision. The increased costs to a developer of a delayed decision to a major project would outweigh the cost of paying a premium DA fee to have the DA 'fast-tracked'.[710]

7.245 The Property Council also agreed but only 'if there were greater certainty around the development assessment timeframe'[711] whilst the Mr Hopkins, on behalf of the MBA, told the Committee that:

> If you told developers with an application in the system at the moment that for a slightly higher fee they would get their development approval faster, there would be a line out of EPSDD around the corner of people wanting to pay that fee.[712]

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[709] Australian Housing and Urban Research Institute, *Submission 38*, p. 7.
[710] Planning Institute of Australia, *Submission 29*, p. 7.
[711] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 26.
[712] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 35.

7.246 During the Estimates hearings in 2019 Mr Hopkins, on behalf of the MBA, noted that new assessment officers were to be funded through an increase in development assessment fees and estimated that even though developments over $1 million in value, will have a substantial 20 per cent increase in fees 'the feedback we have from our members is that they would be prepared to pay that increase if it means faster assessment times.'[713]

7.247 However, Mr Hopkins in his evidence to the Committee also cautioned that equity needed to be a consideration as:

> …not all developers lodging applications are large corporations; many of them are mums and dads using their superannuation funds, maybe an individual building a secondary dwelling or trying to build a dual occupancy. They do not necessarily have the capacity to pay, and nor do I think our system should be set up so that those with the largest capacity to pay get the most favourable treatment.
>
> If there is a problem with DA delays, we need to turn our minds to solutions where everyone has a timely approval and not just those who are willing to pay more for it.[714]

RETROSPECTIVE DEVELOPMENT APPLICATIONS

7.248 As indicated in Chapter 3, DAs for developments undertaken without approval are required if a development has been undertaken, development approval was required for the development, but there was no development approval for the development.

7.249 The PIA told the Committee that in their view 'if an unauthorised action could be corrected through retrospective DA lodgement, then that was an appropriate process, particularly where the works are minor.'[715]

7.250 However, the PIA 'Government workshop' noted that 'the numbers of retrospective DAs were increasing and this was a result of proponents simply undertaking some activity that should have been the subject to a DA, but avoided the DA process.' The PIA submission noted that:[716]

> There is common knowledge among the development industry that the ACT Government is not strong on compliance. The DA Compliance team is within Access Canberra, not within ACTPLA and this may give rise to the belief that proponents can risk any compliance action against works undertaken without approval.[717]

[713] Mr Hopkins, *Proof Transcript of Evidence,* 14 June 2019, pp. 49-50.
[714] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 36.
[715] Planning Institute of Australia, *Submission 29*, p. 8.
[716] Planning Institute of Australia, *Submission 29*, p. 8.
[717] Planning Institute of Australia, *Submission 29*, pp. 8-9.

7.251 In this context the Committee asked the Directorate for a comparison of the approval rates for Retrospective Development Applications and standard Development Applications. In an Answer to Question on Notice, the Directorate indicated that the:

> EPSDD does not keep statistics on the approval rate of development applications because this data is not fixed as original decisions may be subsequently varied, reconsidered, or subject to new decisions as a result of appeal processes. Applications for retrospective approvals are infrequent and represent a relatively small proportion of the regular workload of the development assessment function.[718]

7.252 Additional statistics on Retrospective Development Applications that were submitted for: minor deviations from existing DAs; for development activity for which no DA had been sought; and, for 'historic' unapproved structures were also sought by the Committee. In an Answer to a Question on Notice the Directorate indicated that:

> Minor deviations from existing approvals are likely to be dealt with by an amendment to an existing development approval, rather than a retrospective development application.
>
> All retrospective DAs submitted were for development activity where no previous development approval had been sought.
>
> The information requested for 'historic structures' is not collected during the development application process.[719]

7.253 When asked to reflect on the statement made by the PIA in relation to the increase in retrospective applications, the Minister stated that:

> Under section 205 of the act the lessee of land where development was undertaken without approval may apply for approval of the development. It has got to be treated by the authority as if the development had not been undertaken. Under the standard DA process set out in the act there is an additional requirement for retrospective DAs that the application is to be accompanied by the plan of the development, prepared by the registered surveyor, setting out the dimensions of development on the site.
>
> In the 2017-18 financial year 42 DAs answered yes to the question, "Have works been undertaken without approval?" This represents 3.4 per cent of the overall applications lodged. Of the 42 applications, 28 were approved subject to conditions, two were refused, one was withdrawn and 11 have yet to be determined. If a development is constructed and a DA does not subsequently receive approval the matter is referred to Access Canberra for compliance and consideration. [720]

[718] *Answer to Question on Notice No 6*, answered 4 October 2018.
[719] *Answer to Question on Notice No 6*, answered 4 October 2018.
[720] Minister Gentleman*, Transcript of Evidence*, 13 September 2018, p. 166.

7.254 The Directorate then indicated the number of retrospective applications received over the past five years which showed that such applications were not increasing as the PIA described:

> …from 2013-14, 43 retrospective DAs; 38 the following year, 27, 38, 42—about the same each year.[721]

PENALTIES AND DISINCENTIVES FOR RETROSPECTIVE DEVELOPMENT APPLICATIONS

7.255 The ISCCC told the Committee that in their view:

> …there is an ability to apply for retrospective approval which cannot be challenged. As people are pointing out, it sets a precedent and it then enables others to do the same thing, and there is a rolling effect to all of that. I think there should be very serious penalties, and once those penalties are out there and applied to some people who are prepared to test them initially, quite clearly others will desist. So it is a matter of taking that first big step.[722]

7.256 In this context the Directorate were asked to comment on how many of the refused Retrospective Development Applications have led to a penalty that incorporated rectification work or compliance action by Access Canberra. The Directorate told the Committee that:

> Of the 12 retrospective DAs refused over the past five years, four were referred to the Access Canberra Building and Planning Compliance Team for action. Two of these cases were resolved and closed, with two remaining open. Of the remaining refusals, two were subsequently approved through new development applications, two were approved following an ACAT appeal, and one has a new active development application. The remaining three refusals require further investigation.[723]

7.257 The ISCCC maintained that retrospective approvals still had to be minimised and that those seeking retrospective approval should be subject to 'a substantial additional fee' and 'an automatic on-site inspection to ensure compliance with building regulations' and that 'neighbouring properties should receive a written update and be informed of the final decision.' They also suggested that 'retrospective approvals should require a written explanation of how the situation has arisen.' [724]

7.258 The ISCCC told the Committee that:

> This deterrent would be effective since the additional cost and compliance requirements would be borne by those who do not follow the rules whereas currently,

[721] Mr Phillips, *Transcript of Evidence*, 13 September 2018, p. 167.
[722] Ms Forrest, *Transcript of Evidence*, 13 September 2018, p. 115.
[723] *Answer to Question on Notice No 6*, answered 4 October 2018.
[724] Inner South Canberra Community Council, *Submission 44*, p. 4.

> those who do comply are disadvantaged by time waiting for approvals. Retrospective approvals seem to be routinely granted even where questionable claims are made by applicants that they were ignorant of requirements, which is barely credible when registered builders and architects manage the development.[725]

7.259 The KBRG also suggested that:

> [R]etrospective DAs should only be allowed where there are compelling grounds. These grounds should be set out in legislation. They should not be allowed simply on the basis of 'sin now and seek repentance later' especially when work is done in full knowledge that a DA would not be granted prior to the work being completed.[726]
>
> Permitting developers to lodge a 'retrospective' DA, usually to rectify unapproved work, should be strongly discouraged. Retrospective approvals appear to be used to by-pass normal requirements (e.g. pre-DA community consultation) and this puts undue pressure on the assessment process to approve substandard design and building work.[727]

7.260 The KBRG noted that on occasion the view held in relation to retrospective approvals is 'education rather than enforcement'[728] and concurred with view of the Hughes Resident Association that:

> Retrospective Development Applications should face a significant penalty, varying according to the scale and nature of the unapproved activity and any urgent or extenuating circumstances.[729]

7.261 In response to a Question on Notice about what penalties and disincentives could be built into the Retrospective DA process the Directorate stated:

> Under the Act, retrospective development applications are treated the same as normal development applications. However, there is generally a requirement that the development is surveyed as having been built in accordance with the submitted plans and certified by a registered surveyor. The planning and land authority needs to ensure that what is approved on the plan has been constructed. This can be a significant financial disincentive. Notwithstanding, under section 199 of the *Planning and Development Act* 2007, it is an offence to undertake development without approval. There are significant penalties that attach to this offence and this is intended to serve as a deterrent and disincentive to unlawful actions. The offence is designed to encourage people undertaking development to obtain approval prior to commencing work.

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[725] Inner South Canberra Community Council, *Submission 44*, p. 4.
[726] Kingston and Barton Residents Group, *Submission 39,* p. 3.
[727] Kingston and Barton Residents Group, *Submission 39,* p. 4.
[728] Kingston and Barton Residents Group, Submission 39, p. 4.
[729] Hughes Resident's Association, *Submission 40*, p. 6.

Fees for retrospective development applications are the same as for normal development applications.

The ACT Government is open to the suggestion that retrospective DAs should pay a higher fee as a penalty for not following the normal procedure. However, it should be noted that the assessment process and time is essentially the same. Also, it is important to recognise that not all retrospective DAs are submitted due to deliberate avoidance of the development approval process. There are varied reasons why retrospective DAs may be submitted and a future owner may even be seeking approval for unapproved structures constructed by a previous owner. Ultimately, the authority would like to encourage people into the development approval system. An increased fee for retrospective DAs may act as a disincentive for people to ultimately seek to obtain development approval.[730]

COMMITTEE COMMENT

7.262 The Committee notes there has not been the increase in retrospective DAs as had been suggested. However, it remains concerned that there is a perception in the community and industry that undertaking work without approval is an acceptable risk.

7.263 The Committee is also concerned that the Directorate is unable to supply data in relation to the approval rate for retrospective approvals.

Recommendation 48

7.264 The Committee recommends that the Directorate charge a higher Development Application fee for retrospective Development Applications where the retrospective Development Application is being sought by the same person who undertook the development without approval

[730] *Answer to Question on Notice No 6*, answered 4 October 2018.

8 RECONSIDERATIONS AND APPEALS

RECONSIDERATION OF DEVELOPMENT APPLICATION DECISIONS

8.1 As outlined in Chapter 3, a decision on a development proposal can be reconsidered under section 193 of the *Planning and Development Act* 2007 (the Act) within 20 days of the decision being made.

8.2 Other jurisdictions do not appear to have that same approach, although it was noted that applicants can appeal to their state equivalent of the ACT Civil and Administrative Tribunal (ACAT) in relation to planning decisions. In Victoria the applicant has 60 days from the date of decision to seek a review from Victorian Civil and Administrative Appeals Tribunal (VCAT).

8.3 In an Answer to a Question on Notice the Directorate indicated that in the ACT:

> The reconsideration application consists of documentation from the original application and any new information provided as part of the reconsideration. The Authority must consider all information provided as part of the application, including any reworking of the proposal, and determine whether the development meets the requirements of the Territory Plan.[731]

8.4 In the same Answer to a Question on Notice the Directorate told the Committee that there has been an increase in the number of reconsiderations being sought:

> In 2015-16, 2 applications for reconsideration were lodged. In 2016-17, 35 were lodged, and in 2017-18, 44 were lodged.[732]

8.5 The Committee heard that many in the community cannot see a reason why applicants should have the opportunity for a reconsideration after a decision had been made and that they were of the view that 'requests for reconsideration [were] effectively a second bite of the cherry' wherein an applicant could amend their DA after a decision had been made.[733]

8.6 The Kingston and Barton Residents Group (KBRG) suggested that:

- Pressure should be on the applicants to get their DAs 'right' and for the planning authority to make well based decisions;
- Where multiple resubmissions are made a dedicated review officer should be appointed;

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[731] *Answer to Question on Notice No 3,* answered 9 October 2018.

[732] *Answer to Question on Notice No 3,* answered 9 October 2018.

[733] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 3; Kingston and Barton Residents Group, *Submission 39*, p. 4.

- Reconsiderations should not include substantially amended plans (which should be subject to a new DA);
- There should be clear guidelines as to when a reconsideration can be made and where a minor project can be elevated to the major projects review group - there needs to be a clear definition on what is a 'complex development proposal'; and
- Where a reconsideration is granted there should be mandatory site inspections to ensure compliance.[734]

8.7 Extensions of time for reconsideration applications were also a concern for community groups. Ms Gingell, on behalf of Friends of Hawker Village, also told the Committee that:

> It appears that it has become the practice to permit lengthy extensions of time for developers to lodge reconsideration applications. From the perspective of residents who supported the original decision, having to come to grips with revised plans months later is unreasonably onerous, and the time for comment inadequate.[735]

8.8 The Committee queried the frequency of requests for extensions and in an Answer to a Question on Notice, the Directorate indicated that:

> Requests for extensions of time for reconsideration applications are infrequent and represent a very small proportion of the regular workload of the development assessment function. EPSDD does not keep statistics on how many of the applications requested and received an extension of time. Requests for extensions of time are considered on an ad hoc basis, having regard to the reasons for such a request and the particular proposal.
>
> While requests for extensions have been refused, EPSDD does not keep statistics on these particular requests.[736]

8.9 Akin to notifications of amended DAs, the Committee was informed that only those who made a representation to the original DA were informed (notified) about a reconsideration application. In response to a Question on Notice the Directorate indicated:

> Section 193(5} of the *Planning and Development Act* 2007 (the Act} sets out the requirements for notifying a reconsideration application. Under this section, the planning and land authority need not publicly notify the reconsideration application under division 7.3.4 of the Act but must give written notice to anyone who made a representation under section 156 of the Act about the original application.
>
> It is not a standard business practice for the planning and land authority to undertake additional notification above the minimum requirements as specified in the Act. However, the authority may consider additional notification to be necessary in

[734] Kingston and Barton Residents Group, *Submission 39*, p. 4.
[735] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 3.
[736] *Answer to Question on Notice No 3,* answered 9 October 2018.

particular circumstances, for example where the affected community shows significant interest in a proposal, or where the assessment of the reconsideration proposal may benefit from further public notification. [737]

8.10 The Directorate further indicated that notifications are not restricted:

> Notification of a reconsideration application is considered a continuation of an existing development application process where public consultation has already occurred.[738]

APPEALING DEVELOPMENT APPLICATION DECISIONS

8.11 All jurisdictions allow for appeals on certain planning decisions, with some implementing tribunals prior to a formal court process and others going straight to the courts. The time granted to make an appeal will vary according to the nature of the appeal and the legislation the appeal is lodged under i.e. environment, planning etc.

	Appeal Body	**Who can Appeal**	**Time granted to make an appeal**
NSW	Land and Environment Court.	Applicants and Third-party's who have made a submission	3-6 months
Victoria	Victorian Civil and Administrative Appeals Tribunal Supreme Court	Applicants and Third-party's	21-60 days

[737] *Answer to Question on Notice No 3,* answered 9 October 2018.
[738] *Answer to Question on Notice No 3,* answered 9 October 2018.

Queensland	Planning and Environment Court	Third Party	20 days
WA	State Administrative Tribunal Supreme Court	No third Party	28 days
SA	Environment, Resources and Development Court	Applicants and Third-party's	14 days – 2 months
Tasmania	Resource Management and Planning Appeal Tribunal.	Applicants and Third-party's who have made a submission	14 days
NT	Northern Territory Civil and Administrative Tribunal	Applicants and Third-party's who have made a submission	28 days
ACT	ACAT Supreme Court	Applicants and Third-party's who have made a submission or suffer material detriment	20 days

CRITERIA FOR APPEALS TO ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

8.12 Schedule 1 of the *Planning and Development Act* 2007 sets out the decisions that can be appealed at ACAT, however only 3 of the 51 total reviewable decisions set out in the Act can be appealed by a third party (eligible entity). These are:

- Decision under s162 to approve a development application in the impact track, whether subject to a condition or otherwise, unless the application is exempted by regulation.
- Decision under s162 to approve a development application in the merit track, whether subject to a condition or otherwise, if—

  (a)the application was required to be notified under s153 and s155, whether or not it was also required to be notified under s154; and

  (b)the application is not exempted by regulation.

  Note: A decision under s162 is reviewable only to the extent that the development proposal—(a)is subject to a rule and does not comply with the rule; or(b)is not subject to a rule.(see s121 (2)).
- Decision under s193(1)(b)(i) on reconsideration, unless the development application to which the reconsideration relates is exempted by regulation.[739]

8.13 The Environmental Defenders' Office (EDO) indicated in their submission that this was not optimal as a 'number of very important planning and development decisions that significantly affect the public, or that are in the public interest to be open for comment, but are not open for merits review.'[740]

8.14 In order to have standing for an appeal to ACAT a group or individual must be an 'eligible entity.' Under the *Planning and Development Act* 2007 an entity is considered to be eligible if:

> (a) the entity made a representation under s156 about the development proposal or had a reasonable excuse for not making a representation; and
>
> (b) the approval of the development application may cause the entity to suffer material detriment. [741]

8.15 Material detriment in relation to land is determined under the Act as being suffered if:

> (a)the decision has, or is likely to have, an adverse impact on the entity's use or enjoyment of the land; or

[739] *Planning and Development Act* 2007, Schedule 1.
[740] Environmental Defenders' Office, *Submission 58*, p. 14.
[741] *Planning and Development Act* 2007, Schedule 1.

> (b)for an entity that has objects or purposes—the decision relates to a matter included in the entity's objects or purposes.[742]

8.16 The Directorate indicated that:

> The material detriment is…a test of giving somebody standing at a tribunal…They are sometimes incorporated into the directions hearing but more commonly at an interlocutory hearing.[743]

8.17 The EDO noted that the requirement to make a representation at initial application stage presents an initial hurdle to standing, particularly if interested parties had missed the opportunity to make a representation because they had not known about the DA.[744]

8.18 The EDO also noted that material detriment can be a hurdle for entities with objects and purposes. They told the Committee that even when ACAT has taken a broad approach to these definitions, there has been a significant amount of 'time and money spent arguing about procedural issues such as standing' which the EDO believes 'is better directed towards dealing with the planning decisions at hand.'[745]

8.19 It was noted by the Australian Housing and Urban Research Institute (AHURI) that Victoria grants wide standing to appeal[746] and in this context the EDO suggested that along with allowing 'standing for anyone who has made a representation during the public consultation phase'[747] that:

> As a progressive and innovative jurisdiction, the ACT Government should amend the PD Act to encompass the recommendation of the Hawke Review and remove the material detriment requirement.[748]

8.20 Not all submitters were supportive of wider standing. The Property Council, for example, told the Committee that 'where projects are compliant with the outcomes sought by and espoused in documented policy settings, there should be no third-party rights of appeal.'[749]

8.21 They argued that:

> [T]he risk of a project being taken to third party appeal acts as a very real disincentive to innovative and consider excellent design. Proponents are often unwilling to take the

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[742] *Planning and Development Act* 2007, Section 419

[743] Mr Cilliers, *Transcript of Evidence,* 13 September 2018, p. 164.

[744] Environmental Defenders' Office, *Submission 58*, p. 14.

[745] Environmental Defenders' Office, *Submission 58*, p. 14.

[746] Australian Housing and Urban Research Institute, *Submission 38*, p. 8.

[747] Ms Booker, *Transcript of Evidence*, 10 September 2018, p. 72.

[748] The Hawke Review was undertaken by Dr Allan Hawke in 2008-2009 and assessed the operation and objects of the *Environment Protection and Biodiversity Conservation Act* 1999 (EPBC Act); Environmental Defenders' Office, *Submission 58*, p. 14.

[749] Property Council of Australia, *Submission 49*, p. 9.

> risk of pursuing a contemporary but perhaps "outside the square" solution because of that risk.[750]
>
> The time and cost of appeals is another major issue confronting our members and objectors alike. Many of the ACAT decisions on planning matters take significantly longer than the 120 days prescribed. In addition to the holding costs associated with the land, current ACAT costs have been estimated to regularly cost up to $50,000 and sometime hundreds of thousands of dollars.[751]

8.22 The possible consequences of this were explained to the Committee:

> Not everyone has a million-dollar contingency on a project. And those contingencies, or those costs, translate in different ways for the community. With a lower yield on an aged care development where you are providing beds in demand for the facility, the client just adjusts that development down a storey or something to reduce the number of beds. That is not a good outcome. It flows through.[752]
>
> It is a common outcome, being an architect and seeing those design processes of dumbing it down or lowering the yield, right through to government departments delivering social housing. Do we take the risk on board, going full yield, or do we lower it a bit for the community? There is definitely the risk analysis done early around "Is it going to go to ACAT? Are we going to take that risk?"[753]

8.23 A number of suggestions to modify the criteria for an appeal to ACAT were put forward to the Committee by industry groups:

- setting the application fee at a level of cost that reflects the complexity and cost of undertaking these reviews – increasing the fees if necessary;
- third-party appeal rights used only when the development proposal is significantly different from the Territory Plan or Master Plan;
- third-party appeal rights used only when planning authority has failed to properly assessment the impacts of the proposal;
- higher thresholds to lodge an appeal;
- enabling access a legal aid or similar service;
- providing the option to fast track and hold consideration of cases (for an additional fee);
- providing additional capability and resources to assist with the application;
- greater consistency in decisions taken by ACAT particularly those submissions that are vexatious, frivolous proceedings or appellant simply not showing up; and

[750] Property Council of Australia, *Submission 49*, p. 9.
[751] Property Council of Australia, *Submission 49*, p. 9.
[752] Mr McPherson, *Transcript of Evidence*, 10 September 2018, pp. 31-32.
[753] Mr McPherson, *Transcript of Evidence*, 10 September 2018, p. 32.

- education of the community around the ability to appeal, the permissible uses under the Territory Plan and the likelihood of success in an appeal.[754]

8.24 The Planning Institute Australia (PIA) also noted that advocates for the removal of the current process often preferred a process similar to that in NSW, where such appeals are only allowed if there has been an error at law.[755]

Recommendation 49

8.25 The Committee recommends that the ACT Government continue to support third party appeal rights for planning decisions, including those relating to Merit and Impact track Development Applications.

ACCESSIBILITY OF APPEALS PROCESS

8.26 A number of submitters, particularly community groups and individuals, noted the often prohibitive cost of the ACAT process and questioned the equity of access to the appeals process.[756]

8.27 Mr Moore, on behalf of the KBRG, stated that many found the ACAT appeals process 'expensive, legalistic and clumsy.' He told the Committee that:

> Because of the nature of the orientation and expense of appealing to this mechanism, it is the community perception that, in effect, a proper appeals mechanism is not available to individual citizens or to community groups.[757]

8.28 Ms Gingell, on behalf of Friends of Hawker Village, also told the Committee:

> ACAT's review powers do not meet the needs of non-developer applicants. Tribunal members cannot consider the extent to which zone objectives are met, and focus only on compliance with rules and criteria.[758]

8.29 Alison Kelly and Paul Appleton highlighted the prohibitive costs involved in appealing a DA:

> We were quite taken aback at the cost involved to appeal a decision by the Planning Authority regarding a DA. Developers and builders generally have at hand a lawyer and/or architect to provide expert evidence. A resident has no such ready access. The cost of trying to obtain an expert opinion to augment a resident's evidence would be

[754] Property Council of Australia, *Submission 49*, p. 9; *Transcript of Evidence*, 10 September 2018, pp. 30; 34; 35.
[755] Planning Institute of Australia, *Submission 29*, p. 9.
[756] For example, Campbell Community Association, *Submission 18*.
[757] Mr Moore, *Transcript of Evidence*, 10 September 2018, p. 5.
[758] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 3.

> prohibitive for most residents contemplating a submission for a DA, or an appeal against a decision. This naturally acts as a deterrent to many would-be appellants.[759]
>
> Should a resident wish to appeal a DA decision, there is the prerequisite $350 cost just to appeal. We have asked and been advised that, for any other resident who may wish to join the appeal, even to merely say "I agree with him/her, would also require that person to pay the Tribunal an additional $350.[760]

8.30 Macquarie resident Mrs Davison highlighted the ongoing financial costs for an ACAT appeal:

> It is $350 to put your appeal in, then we have to pay sitting fees. That is $150, I believe, per day, and it could go on for days or weeks. So with the cost you are not quite sure what you are up for. It is also the time involved, which is time and money. There are several hearings you have to go to: direction hearings, sitting dates, mediation. Mediation can take all day. So the process can be lengthy.[761]

8.31 The EDO shared this view noting in their submission:

> The financial risks and costs of challenging decisions or pursuing legal remedies act as a disincentive to public participation. The valuable perspectives of communities, citizens, and civil society are less likely to be engaged because of financial barriers. Legal costs, ACAT costs, and expert costs act as a deterrent. This is at the expense of democratic process and the protection of the environment.[762]

8.32 The Campbell Community Association, also noted the risk 'that if an application for review under the Planning Act is struck out or dismissed, the Tribunal can order the applicant to pay the reasonable legal costs of the other party'[763] and concurred with the Ginninderra Falls Association, who noted that it was 'a formidable process for the ordinary person to deal with' also claimed that 'the main beneficiaries are members of the legal profession.'[764]

8.33 Some industry groups found that the cost was not an issue for some and expressed concern about the level of spurious and vexatious claims.

8.34 The Property Council indicated that they sought a 'review of the ability for vexatious claims to be progressed – which unnecessarily delay projects for months.'[765]

> Look at the appeals in ACAT. There is the ability for a vexatious claim to go all the way through and cost a community group or a client a lot of money—all the way to the Supreme Court in some cases and then have only costs awarded in that situation is

[759] Kelly and Appleton, *Submission 60,* p, 7.
[760] Kelly and Appleton, *Submission 60,* p, 7.
[761] Mrs Davison, *Transcript of Evidence*, 10 September 2018, p. 63.
[762] Environmental Defenders' Office, *Submission 58*, p. 15.
[763] Campbell Community Association, *Submission 18*, p. 4.
[764] Ginninderra Falls Association, *Submission 14*, p. 3.
[765] Property Council of Australia, *Submission 49*, p. 9.

> inequitable. To lodge an appeal for $248 and take that all the way through a process and cost clients a million or a million and a half dollars—and I can give examples of community groups that have had those costs—is inequitable. It goes both ways.[766]

8.35 Both the Australian Institute of Architects (AIA) and the Master Builders Association (MBA) echoed this sentiment with the MBA stating that the appeals process:

> …can be open to abuse by vexatious stakeholders who are sometimes commercial competitors, or it can simply be used to delay a development proposal by the objector in the hope that a 12-month delay will lead to the proposal being unviable, and often that is successful.[767]

8.36 The MBA further stated that:

> It is concerning that once that has occurred, an appeal is able to be lodged for very little effort or expense, even though a qualified professional has already determined that the application is appropriate…We are concerned that a number of members have experienced problems where someone who has no real nexus to the development lodges an appeal to ACAT. Similarly, appeals have been lodged (and ultimately developments delayed for an extensive period), without the ACAT appellant being required to articulate exactly the issues subject to the appeal.[768]

8.37 Whilst delays were a concern for the industry it was noted that sometimes developers had been given approval and had started work before the appeal period had concluded. Angela McGrath in her submission made reference to her experience with stamped plans for a neighbouring property being released during the 20-day period, before the appeal was lodged.

8.38 Ms McGrath indicated that the developer used this opportunity to start work, including removing protected trees and that this went on for 10 days, despite complaints to Access Canberra and the Planning Authority. She suggested that:

> DA approval/plans should not be released until the statutory period of 20 working days has passed and the Planning Authority is satisfied that no request for appeal has been lodged.[769]

8.39 The EDO also noted that they too had 'received complaints by third parties who had lodged a review of a decision in the ACAT, only to find out that the Planning and Land Authority approved the development they were appealing prior to the end of the statutory time limit for third parties to lodge an appeal in ACAT to review the matter.'[770]

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[766] Mr McPherson, *Transcript of Evidence*, 10 September 2018, p. 30.
[767] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 34.
[768] Master Builders Association of the ACT, *Submission 48*, p. 2.
[769] Angela McGrath, *Submission 36*, p. 2.
[770] Environmental Defenders' Office, *Submission 58*, p. 20.

8.40 They noted two instances where:

> [T]he Planning and Land Authority advised the development applicant of the development approval (despite this being within the 20 day time period for which third parties could lodge their application, and in contravention of development approval periods in the PD Act) the applicants in both instances immediately sought to develop the land, cutting down regulated trees or threatened flora, rendering ACAT appeals redundant.[771]

Recommendation 50

8.41 The Committee recommends that sanctions are applied to developers who begin work prior to the end of the appeal period for an approved Development Application.

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT) OUTCOMES

8.42 In an Answer to a Question on Notice the Directorate explained that:

> Schedule 1 of the Planning Act sets out all reviewable decisions, eligible entities and interested entities. The majority of development approval decisions reviewed by the ACAT are those that fit into column 1, item 4 of Schedule 1. [772]

8.43 When asked if they could provide details relating to the number of appeals that resulted in ACAT altering the DA after it had been approved by ACTPLA, the Directorate stated that 31 of the authority's decisions were affirmed by the Tribunal with new or altered conditions.[773]

8.44 When asked if they could provide details relating to the number of appeals that resulted in ACAT rejecting the DA, the Directorate stated that five of the authority's decisions were 'overturned' by the Tribunal. The Directorate also noted that the Tribunal is not charged with any responsibility to 'reject', or 'alter' a reviewable decision…the role of the Tribunal is to make the correct and preferable decision, as if looking at the development application from the start.[774]

8.45 When asked if they could provide details relating to the number of appeals that ACAT did not make any alterations to, the number was three. The Directorate also confirmed that 16 matters were 'dismissed by the Tribunal', either by consent, unilaterally by the applicant or otherwise for want of jurisdiction by the Tribunal.[775]

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[771] Environmental Defenders' Office, *Submission 58*, p. 20.
[772] *Answer to Question on Notice No 7*, answered 9 October 2018.
[773] *Answer to Question on Notice No 7*, answered 9 October 2018.
[774] *Answer to Question on Notice No 7*, answered 9 October 2018.
[775] *Answer to Question on Notice No 7*, answered 9 October 2018.

8.46 In an Answer to a Question on Notice the Directorate provided the following information for the past three financial years. In relation to the number of DA appeals to ACAT, and the location of Zones:

> [The total number of appeals was] 63. In some instances, there were a number of separate reviews lodged in relation to the same DA. These applications were consolidated and for the purpose of this statistic considered one review. The total of the answers provided below is not equal to the number of matters outlined here as some matters are still being considered by ACAT.[776]

6-B Which zones were these appealed DAs located in	2015-2016	2016-2017	2017-2018
CF: Community Facilities	2	2	5
CZ: 2,3,4,5,6	5	7	2
RZ: 1,2,3,4,5	11	11	14
IZ: Industrial Mix Use	0	1	0
PRZ1: Urban open space	0	1	0
NUZ3: Hills, Ridges and Buffer Areas	0	0	1

8.47 The Directorate also indicated that data regarding the percentage of DAs that are appealed in each zone is not captured by the authority.[777]

8.48 The Directorate then clarified that third-party appeal rights for Commercial and Mixed Use Zones are impacted by:

> Section 350 of the Planning and Development Regulation 2008 (the Planning Regulation) sets out merit and impact track decisions that are exempt from third-party review. These exemptions are in turn specifically listed in Schedule 3 of the Planning Regulation. Examples include the city centre, town centres, industrial zones and Kingston Foreshore. These areas have been identified as key growth areas and third party appeal rights have been limited to achieve Government policies (such as urban infill and higher density), facilitate development and minimise costs, uncertainties and delays. If merit review is not available, judicial review may be available in the Supreme Court. [778]

[776] *Answer to Question on Notice No 7*, answered 9 October 2018.
[777] *Answer to Question on Notice No 7*, answered 9 October 2018.
[778] *Answer to Question on Notice No 7*, answered 9 October 2018.

8.49 The Committee stated that there have been appeals to ACAT that have revealed instances where ACAT was not of the belief that ACTPLA correctly interpreted rules and criteria. They asked the Directorate to comment on how people can be assured that ACTPLA is going to correctly evaluate all the rules and criteria, with emphasis on the zone objectives. They stated that:

> [T]he tribunal does not consider the rules of the Territory Plan because compliance against the rules is not a matter that the tribunal can consider. It considers the criteria.
>
> …The tribunal has applied its judgement, based on the evidence before it, and has formed a different view. But it does not mean that the planning authority's decision was wrong. It simply means that somebody formed a different view. And that is planning.
>
> …Then it is open to the proponent, who thinks the tribunal's view is not the correct view, to apply to the Supreme Court. We have seen examples where the Supreme Court has formed an alternative view…That is both the legal system and the planning system. [779]

8.50 KBRG also suggested that 'previous cases and decisions should be made readily available for all attending ACAT' and that level of precedence was important although 'there needs to be a more transparent process within the system including the discretionary nature of when a presiding member can choose to accept or reject a previous decision as a precedent.' [780]

COMMITTEE COMMENT

8.51 The Committee notes that as ACAT has judicial and quasi-judicial functions as well as administrative functions it is beyond the remit of the Committee to request that ACAT change its processes or account for its decisions. Consequently, the Committee will limit its recommendations to those that can be effected by the Assembly or the ACT Government within legislation and within the bounds of the separation of powers.

Recommendation 51

8.52 The Committee recommends that the Directorate work with the ACT Civil and Administrative Tribunal on ways to increase the accessibility of ACT Civil and Administrative Tribunal decisions, orders and associated documents related to Development Application appeals, for example linking them to the relevant Development Application on the Directorate's website.

[779] Mr Ponton, *Transcript of Evidence*, 13 September 2018, pp. 163-164.
[780] Kingston and Barton Residents Group, Submission 39, p. 4.

ALTERNATIVES TO THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

8.53 The MBA advocated that 'the rights of an applicant to appeal must be protected, but we do question whether ACAT is the correct tribunal or body for those appeals to be lodged.'[781]

8.54 Mr Moore, on behalf of the KBRG, told the Committee that he felt that if ACAT was to continue to be the mechanism for review of DAs then:

> The area of ACAT dealing with the DA process must be reviewed. I think it must form part of your review. It must be substantially modified if it is to become a realistic and equitable review process and acquire any confidence from the community. ACAT has lost the confidence of the community and that needs to be rectified.[782]

8.55 However, the Committee was also told that there was a 'strong need for internal processes involving the applicant, assessors and objectors to attempt resolution before resorting to legal avenues.'[783]

8.56 Margaret Dudley in her submission emphasised the lack of options for redress for those with concerns about development applications. She stated that:

> …as it currently stands there is nothing that can be done between making comments about the development at the stage it is put up for comment on the government website and going to ACAT, a process that is stressful, time consuming and expensive. Most people are frightened of taking their complaints to ACAT as a loss could result in further legal expenses on top of those already accrued just to get it to that point. There needs to be some independent body in between these two points in the process that is easily accessible, has access to professional advice and incurs little or no cost for the parties involved.[784]

8.57 Ginninderra Falls Association also believed that:

> I would think some process between the approval of the DA and having to appeal to ACAT, some formal process whereby the developers and the appellants and the government people could get together and try to sort out the problems….it is hard to know how amiable or how helpful that sort of thing would be. But if it were done properly it could help each side understand better why the other side is doing what they are doing.[785]

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[781] Master Builders Association of the ACT, *Submission 48*, p. 3.
[782] Mr Moore, *Transcript of Evidence*, 10 September 2018, p. 5.
[783] Ginninderra Falls Association, *Submission 14*, p. 3.
[784] Margaret Dudley, *Submission 35.*
[785] Ms Coghlan, *Transcript of Evidence*, 10 September 2018, p. 81.

8.58 The AIA stated that it was important to have an ACAT process:

> … given that there are a lot of DAs that are put in that assess criteria and those criteria are obviously viewed by particular assessing officers at the directorate. So I think in terms of certain developments, yes, the ACAT process is important to still have as an avenue but I think it would be important that there is that opportunity for mediation in between. I think it is not something that should be an automatic reference point for any project.[786]

8.59 It was noted by the Committee that the 2015 'Statement of Planning Intent' indicated an intention to:

> *Review third party appeal rights for certain strategic areas to support more flexible and innovative planning outcomes.*[787]

8.60 The Directorate was asked what this statement meant and the status of any review. In an Answer to a Question on Notice the Directorate explained that:

> The statement referred to was made in the context of a short-term action to deliver an outcome-focused planning system to reward design excellence and innovation. For certain strategic areas and/or projects, the Government has limited third party appeal rights to ensure that projects can have regulatory certainty and good planning outcomes can be facilitated. For example, in 2015 the Government introduced legislation to limit appeal rights for development related to light rail and the University of Canberra campus. These strategic developments are considered to be in the public interest and of economic importance to the Territory. These projects have benefitted from regulatory certainty at each stage of the development. The Government will continue to review third party appeal rights for strategic areas in the future to support more flexible and innovative planning outcomes.[788]

MEDIATION

8.61 The EDO noted that mediation would be a valuable step in the appeals process telling the Committee that:

> I know that in ACAT's processes at this point in time there is the discretion for the relevant member to require a mediation process if they think it is appropriate before a hearing. I think that is really valuable. I do not see that there would be an issue in having a mediation process. It would require some thinking because obviously you have got 20 working days to appeal to ACAT. When would mediation come into play?

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[786] Ms Leong, *Transcript of Evidence*, 10 September 2018, p. 45.

[787] Environment, Planning and Sustainable Development Directorate – Planning, 'Statement of Planning Intent 2015', p. 9, https://www.planning.act.gov.au/__data/assets/pdf_file/0004/898285/Statement_of_Planning_Intent_2016-Access-test.pdf, Accessed 10 February 2020.

[788] *Answer to Question on Notice No 7*, answered 9 October 2018.

> When would you have that? But I think it is a good idea to avoid litigation where possible.[789]

8.62 The EDO emphasised that:

> You would have to think really carefully about the timing of the mediation. There are some proponents that do not want to mediate. There are some proponents that can be quite intimidating, so it is just not appropriate.
>
> The advantage of having ACAT in the room and seeing the parties, if they are self-represented or if they are represented by lawyers, and how appropriate it is to have mediation in that context, is important. You would need to have some sort of independent third party overseeing whether a mediation is appropriate, given the parties and the circumstances.[790]

8.63 The EDO went on to tell the Committee that honouring the decisions made in mediation was important:

> With the terms of mediation or settlement in ACAT, if all parties understood the nature of the mediation, the outcomes of the mediation and the consequences if particular terms of mediation or settlement were not abided by, it would be really important to educate all parties on that. There is no point in having mediation if all parties, whether it be third parties or developers, do not understand about honouring the agreement that has been made. Having a mediation arise out of the ACAT process would be a safer way to ensure that all parties understood what their obligations were.[791]

8.64 From an industry perspective it was agreed that mediation would be a good idea if managed appropriately:

> I think we could look at a step in the process after the decision is made and before an ACAT appeal where there could be mediation. Provided there were some certainty in that process for the developer, that it was not just going to open up every aspect of the proposal for reconsideration and that there was some sort of timeline as to when it would happen so it could not be used as a delaying tactic by vexatious appellants, there would be merit in looking at mediation as a solution.[792]

8.65 The Property Council highlighted that the success of mediation was highly dependent on the participants:

> We move past mediation very quickly. I think the ability to have a discussion is much easier at mediation around the quality outcome than it is in ACAT when you are talking

[789] Ms Booker, *Transcript of Evidence*, 10 September 2018, pp. 72-73.
[790] Ms Booker, *Transcript of Evidence*, 10 September 2018, pp. 73-74.
[791] Ms Booker, *Transcript of Evidence*, 10 September 2018, p. 74.
[792] Mr Hopkins, *Transcript of Evidence*, 10 September 2018, p. 36.

> about the criteria or a particular rule….design outcomes discussion happens better in mediation, so if we can encourage that process to stay longer—yes.[793]

8.66 The Directorate told the Committee that:

> In terms of mediation, once an action is brought all parties usually spend a day, possibly two, to work through the various issues and to see whether or not agreement can be reached between the objector, the proponent and the Planning and Land Authority before we get to potentially two, three or four days of hearings.
>
> …The tribunal appoints a professional mediator. [794]
>
> The mediation process that precedes the hearing happens just after the directions hearing, usually within two weeks from a directions hearing. Normally a day is set aside and the tribunal appoints a professional mediator. Mediation sessions are confidential.
>
> The role of the Planning and Land Authority is to assist the tribunal in sharing whatever agreement the parties can come to. The Planning and Land Authority itself may be a party to it if it is a refusal, in other words, a first-party appeal, we have refused the decision. Then the Planning and Land Authority takes a step back and ensures that the decision that the parties reached agreement on, if they reach agreement, can actually be lawfully made. If they reach agreement, that decision or that agreement is then handed to the tribunal to make orders. The tribunal will consider it before making orders.
>
> The mediation process is particularly successful, I find, in our jurisdiction. I think it is in excess of 60 per cent of the matters that we let our appeal get settled through mediation prior to going to hearing. But it is an opportunity for the parties to engage with each other without the constraints of the formal process or hearing…have an open discussion about their issues and try to seek some common ground. Part of that decision will be also to put down conditions similar to those of the decision. [795]

8.67 In response to a Question on Notice about the current mediation process, and an alternative mediation process, the Directorate stated that:

> Mediation is undertaken on a confidential and without prejudice basis, meaning it is conducted without detriment to any existing rights or claims. This helps to promote honest, meaningful and constructive discussions between the parties. A mediation style option in lieu of ACAT would require significant resourcing and require significant change across various legislation.[796]

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[793] Mr McPherson, *Transcript of Evidence*, 10 September 2018, p. 31.
[794] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 164.
[795] Mr Cilliers, *Transcript of Evidence*, 13 September 2018, pp. 164-165.
[796] *Answer to Question on Notice No 7*, answered 9 October 2018.

INDEPENDENT REVIEW BODY

8.68 As an alternative to ACAT, it was suggested that decisions in relation to DAs should be reviewed by an independent review body that is separate to the EPSDD, in the form of a tribunal or review panel. It was also suggested that a return to having a Commissioner for Land and Planning would also be a viable option.

8.69 The Committee were informed by the KBRG that:

> To restore public faith in the assessment process, DA decisions should be reviewable by a body independent of the Environment, Planning and Sustainable Development Directorate, and individuals and groups lodging submissions or queries should be informed of these review processes in writing.[797]

8.70 In this context the KBRG suggested a return to the 'earlier specialist planning and land tribunal' as an alternative to ACAT,[798] whilst a 'Professional Review Panel' was proposed by the Campbell Community Association wherein 'a panel of expert professionals' was set up 'as an avenue of review to ensure that objections and other concerns are appropriately and independently addressed.'[799]

8.71 The Inner South Canberra Community Council (ISCCC) suggested that:

> Consideration should be given to re-establishing the role of the Commissioner of Land and Planning. This role was independent of the planning body, and, senior planners rotated through the office. Objectors to particular DAs were included in the review process and were given a written copy of the final decision. All parties retained the right to appeal the reviewed decision.[800]

COMMITTEE COMMENT

8.72 The Committee notes the views of both industry and community evidence around the cost and complexity of appeals. ACAT by nature has judicial, quasi-judicial and administrative functions and this brings with it processes that can be difficult for parties unfamiliar with legal practices to navigate. The Committee believes it is worth exploring alternatives that can reduce costs and complexity, such as a design facilitation approach led by an independent architect.

Recommendation 52

[797] Hughes Resident's Association, *Submission 40*, p. 6.
[798] Kingston and Barton Residents Group, *Submission 39*, p. 4.
[799] Campbell Community Association, *Submission 18*, p. 4.
[800] Inner South Canberra Community Council, *Submission 44*, p. 4.

8.73 The Committee recommends that the ACT Government pilot an opt-in design-led mediation option outside of the ACT Civil and Administrative Tribunal for objections that could be resolved by modest design changes.

9 HERITAGE, TREE PROTECTION AND ENVIRONMENT ASSESSMENTS

9.1 In their submission the Environmental Defenders' Office (EDO) expressed their concerns about the lack of priority afforded to conservation principles. They indicated that the natural environment in the ACT, despite the objects stated in the Act[801] is not given priority and more often than not is a 'mere consideration':[802]

> …environmental principles are one of a number of objects means that no priority or weight is given to the natural environment. This means that the weight to be assigned to these nature conservation and biodiversity principles is at the discretion of the decision-maker. Inevitably, the principles that conserve the environment give way to more immediately powerful economic and social considerations. The conservation of the natural environment should be given explicit priority in the PD Act, rather than being listed as one of many objects. Decision-makers should also be required to exercise their functions in order to achieve these objects.[803]

9.2 The EDO suggested that 'environmental principles,' as articulated in the Blueprint for the Next Generation of Australian Environmental Law,[804] be set out in the Act and 'legally enforceable mechanisms be introduced to implement them.'[805]

9.3 The Ginninderra Falls Association emphasised the importance of protecting biodiversity amid an increasing population and the consequential impact of increasing housing density and housing spread:

> Given Canberra's growth since the first sale of land leases in 1924, it is obvious that the city has already had a significant effect on the numbers of each species and on their potential habitats and foraging grounds. Exponential population growth is now pushing housing into areas previously quarantined from development to protect the river system in the headwaters of the Murray-Darling Basin. Consequently, it is critical that sincere assessment of urban impact on biodiversity be comprehensively examined at each stage of future development. With the pressure to house an expanding human population, there is a tension between maintaining the natural ecology and converting the land to urban use.[806]

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[801] It is of note that the EDO and some other organisations often refer to the *Planning and Development Act* 2007 as the PD Act; Environmental Defenders' Office, *Submission 58*, p. 22.

[802] Environmental Defenders' Office, *Submission 58*, p. 22.

[803] Environmental Defenders' Office, *Submission 58*, p. 21.

[804] Accessible at http://apeel.org.au/.

[805] Environmental Defenders' Office, *Submission 58*, p. 23.

[806] Ginninderra Falls Association, *Submission 14*, pp. 2-3.

9.4 In their submission the National Trust highlighted that 'the lack of status of the Heritage Act in the planning process' is also a concern:

> as the Heritage Council is consulted for advice only and planners make the decision. Research into best practice and possible integration of heritage with planning should be undertaken…There is little or no reference to Heritage in the ACT Planning Act.[807]

9.5 The Kingston and Barton Residents Group (KBRG) suggested that:

> Heritage and tree protection should be a higher consideration than zoning and associated exemptions under the Planning Act, this is important to protect significant heritage as areas increasingly are rezoned for higher density, mixed use and commercial zoning and where the current precedent means schedule three of the Planning Act overrides heritage listings.[808]

ENVIRONMENT ASSESSMENTS

9.6 Prior to development assessment, environmental assessment is conducted. As discussed in Chapter 3 there are three environmental assessment options available for ACT protected matters:

- Environmental Impact Statement (EIS)
- EIS Exemption; and
- Environmental Significance Opinion (ESO).

9.7 In discussions with the Committee on the adequacy of environmental assessments the Ginninderra Falls Association made reference to the lack of detailed knowledge about local flora and fauna and advocated that 'no evidence' should never be the grounds on which to sanction a development. They were adamant that the precautionary principle should be applied in such circumstances:

> The premise of the precautionary principle is that activity should not be permitted where there is uncertainty regarding its effects. To achieve this, reliable outcomes will depend on the use of independent researchers without any connection to vested interests. In this context, we note that the current practice is for such reports to be commissioned by the developer. Use of independent researchers will require the creation of an independent agency to select these independent researchers and to commission studies and reports that are seen to be independent. Such an agency should be funded by developers and should be totally independent of government.[809]

[807] National Trust of Australia (ACT), *Submission 23,* p. 1.
[808] Kingston and Barton Residents Group, *Submission 39*, p. 5.
[809] Ms Coghlan, *Transcript of Evidence*, 10 September 2018, p. 79.

> Such independent research and reports should be received by government before any DA is lodged to determine suitability of any development on the site from an environmental perspective. Doing so after development expectations have been raised is always counterproductive.[810]

9.8 The EDO also noted that 'reports provided in support of DAs to assess the environmental impacts of a development are currently commissioned and overseen by proponents.' They questioned whether an EIS 'provided in support of a DA are sufficiently independent to give an unbiased opinion of the impacts of a development.'[811]

9.9 This view was shared by Carol Russell who indicated that many 'so called "independent" impact studies submitted by developers in support of their proposals are of very poor quality' which means the community is forced to conduct their own genuine consultations and impact studies into key planning issues relevant to specific DAs.[812]

9.10 The EDO and a number of community organisations made reference to the conflict of interest between developers and their paid consultants,[813] with Dr Fogerty from the Hughes Residents Association, telling the Committee of an instance where a developers environmental assessment, which actually contrasted with the ACT government's own ecology report, had placed the development application on the merit track as opposed to the impact track:

> As an example of why things need to change, the Environment, Planning and Sustainable Development Directorate earlier this year decided to assess the section 66 Deakin Kent Street development on the merit track rather than the more rigorous impact track. This decision was based on an environment assessment report supplied by the developer, which wrongly stated that the section comprised degraded exotic vegetation.
>
> In fact the ACT's own senior government ecologist had previously surveyed the section and reported that it comprised predominantly endangered yellow box-red gum woodland. We understand that, following a site visit from EPSDD at our invitation, more information is being sought from the developer.[814]

9.11 The EDO noted that '"Significant impacts" to regionally-listed species are a trigger to lodge a DA in the impact track, per Schedule 4.3 Item 1 (e) of the PD Act.' However, the same level of diligence on impacts to ACT-listed species and ecological communities is not required.[815]

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[810] Ms Coghlan, *Transcript of Evidence*, 10 September 2018, p. 79.

[811] Environmental Defenders' Office, *Submission 58*, p. 15.

[812] Carol Russell, *Submission 32*, p. 4.

[813] See for example, Dr Fogerty, *Transcript of Evidence*, 10 September 2018, p. 7; Ginninderra Falls Association, *Submission 14,* p. 3.Environmental Defenders' Office, *Submission 58;* Hughes Resident's Association, *Submission 40*; Red Hill Regenerators, *Submission 10*.

[814] Dr Fogerty, *Transcript of Evidence*, 10 September 2018, p. 7.

[815] Environmental Defenders' Office, *Submission 58*, pp. 17-18.

9.12 In order to avoid situations where assessment tracks do not identify proposals with environmental impact the Hughes Residents Association suggested that:

> Where an Environment Assessment is required for a DA, or has been conducted, or where submissions have raised environmental impact issues, the ACT Government should undertake an independent assessment by a qualified Ecologist, consisting at the minimum of an independent site visit and report.[816]

9.13 The EDO suggested that:

> Independent assessors should be obtained from a pool of independent experts in the ACT and surrounds. To increase transparency and remove any perceptions of bias, the experts should be assigned to a project by an independent body. Projects with the largest potential impacts should attract the greatest scrutiny.[817]

9.14 The Ginninderra Falls Association further indicated that the independent body 'should be at arm's length distance from the ACT Government' and the cost of the consultant 'should be borne by funds contributed by developers.'[818]

9.15 In response the Directorate stated, in an Answer to Question on Notice:

> Consultant reports that are submitted to support development applications are referred to relevant experts within the ACT Government. While qualitative assessments of environmental issues may differ, these issues are discussed and resolved between the ACT Government and the relevant consultant, and further information is sought where necessary.[819]

Recommendation 53

9.16 The Committee recommends that, to minimise any conflict of interest, that the Directorate consider establishing a pool of independent environmental experts who are assigned by the ACT Government to undertake peer reviews of Environmental Impact Statements, Environmental Impact Statement Exemptions and other environmental assessment documents submitted with Development Applications lodged in the Merit or Impact tracks.

[816] Hughes Resident's Association, *Submission 40*, p. 7.
[817] Environmental Defenders' Office, *Submission 58*, pp. 15-16.
[818] Ginninderra Falls Association, *Submission 14,* p. 3.
[819] *Answer to Question on Notice No 8*, answered 9 October 2018.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

9.17 As indicated in Chapter 3 an Environmental Impact Statement (EIS) is required for any development application in the impact track.

9.18 Most jurisdictions require a version of an EIS for matters listed in their respective Environment and/or Planning legislation (e.g. NSW, WA, Vic). In addition some jurisdictions make it mandatory to have members on their assessment/planning panels who have expertise in environment matters.

9.19 Mr Moore, on behalf of the KBRG, in his evidence to the Committee indicated that the ACT 'community holds grave concern in regard to the EIS process and its related DAs.'[820] In addition to the aforementioned concerns about the alleged actions of consultants the key concerns communicated to the Committee regarding the EIS process related to public consultation and the lack of access to both the draft and final versions of an EIS.

9.20 In their submission the EDO indicated that despite the importance of public consultation during environmental assessments 'there is insufficient public consultation during the environmental impact statement (EIS) process.'[821] The EDO noted that this meant that the local community and citizen scientists, who are often experts on the environmental characteristics and values of their local area, were unable to contribute to the process. The EDO suggested that the Act:

> …should be amended to require consultation at each of the following stages:
>
> 1. Preparation of a scoping document. A scoping document is a written notice prepared by Planning and Land Authority that sets out the matters that must be addressed by the proponent in preparing the draft EIS (section 212). Identifying the likely environmental impacts of a development proposal is an important step in the EIS as it defines the scope. Public consultation is required at this pre-EIS stage, to provide inputs to the scope of the EIS.
>
> 2. Revised draft EIS. The PD Act offers no opportunity for further public consultation following consultation on a draft EIS. The public should be given the opportunity to re-consult if EIS' are revised.[822]

9.21 Carol Russell in her submission also indicated that each version of an EIS should be made available for public comment.[823]

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[820] Mr Moore, *Transcript of Evidence*, 10 September 2018, p. 5.
[821] Environmental Defenders' Office, *Submission 58*, p. 16.
[822] Environmental Defenders' Office, *Submission 58*, p. 16.
[823] Carol Russell, *Submission 32*, p. 5.

ENVIRONMENTAL IMPACT STATEMENT EXEMPTIONS

9.22 As described in Chapter 3 a proponent may apply for an EIS exemption for any proposal that would trigger an EIS.

9.23 Under section 211 of the *Planning and Development Act* 2007 the Minister has the discretion to grant an exemption if satisfied that the expected environment impact of the development proposal has already been sufficiently addressed by a recent study.[824]

9.24 The EDO expressed concerns that 'the EIS exemption process is currently used to avoid necessary environmental assessment, particularly with respect to threatened species and ecological communities in the ACT, listed under the Nature Conservation Act.'[825]

9.25 The EDO also noted a number of procedural issues with the EIS exemption process including:

- The period to lodge representations (15 days) is too short for meaningful consultation to occur;
- Applications and supporting information for EIS are poorly titled and organised making it difficult to provide appropriate comment;
- The decision to grant an exemption cannot be appealed by third parties; and
- Exemptions are often given for periods of time allowable under the EPBC Act approval process (in excess of the 5 years provided under the Act) and this does not take into account the fact that 'natural systems constantly change and this dynamism will increase with climate change. It is highly unlikely that studies submitted for the purpose of an EIS exemption will still be relevant in 20 years' time.'[826]

9.26 In relation to third-party appeals for EIS Exemption the Directorate indicated in an Answer to a Question on Notice that:

> An exemption from the requirement to include an EIS in the development application for the proposal is not listed in Schedule 1 of the Planning Act as a reviewable decision. The Minister's decision on an EIS Exemption is not reviewable because it is a decision by the Minister on whether the recent studies presented by the applicant appropriately consider all of the likely environmental impacts of the proposal. It is not an approval decision, rather, the EIS and EIS exemption processes allow for the gathering of relevant information on the potential environmental impacts of proposals.

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[824] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Assessment,' https://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessment, Accessed 10 February 2020; Environment, Planning and Sustainable Development Directorate – Planning, 'Exemption from requiring an EIOS (s211),' https://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessmenthttps://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessment/exemption_from_requiring_an_eis_s211

[825] Environmental Defenders' Office, *Submission 58*, p. 16.

[826] Environmental Defenders' Office, *Submission 58*, p. 17.

> The subsequent and corresponding impact track development application is generally a reviewable decision.[827]

9.27 In addition to process concerns the Ginninderra Falls Association told the Committee of concerns they had about the unreviewable powers of the Minister:

- to call in a decision that the ACAT has determined was incorrectly lodged in the Merit Track and should have been lodged in the Impact Track requiring an Environmental Impact Statement (EIS);
- to approve an application for exemption from providing an EIS for more than one DA/stage at a time;
- to allow an exemption from providing an EIS for any stage of a development at the interface between the urban area and the natural environment; and
- to allow a blanket exemption applicable for development that will not occur for decades into the future.[828]

ENVIRONMENT SIGNIFICANCE OPINIONS (ESO)

9.28 A proponent may apply for an Environment Significance Opinion (ESO) from the relevant agency(s) on the grounds that their proposal is not likely to have a significant adverse environmental or heritage impact. The ESO is only available for some proposals. [829]

9.29 Icon Water expressed concerns about DAs being submitted by proponents without all the ESOs. They indicated that a proponent may need to obtain a number of ESOs in order

> to satisfy a range of regulatory considerations such as conservation, heritage, environment protection and contamination' which means the 'require different Directorates to review and determine significance.[830]

9.30 Icon Water noted that:

> In practice, this process is not coordinated or streamlined to enable a proponent to get an ESO determination for their project, rather the ESO splits into a range of ESOs and it is up to the proponent to chase up each regulator separately.[831]

9.31 In order to streamline this process, Icon Water suggested workflows of ESOs be incorporated into the new version of e-Development and that where needed 'allow for the submission of a

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[827] *Answer to Question on Notice No 7*, answered 9 October 2018.

[828] Ginninderra Falls Association, *Submission 14*, p. 4; Ms Coghlan, *Transcript of Evidence*, 10 September 2018, p. 79.

[829] Environment, Planning and Sustainable Development Directorate – Planning, 'Environmental Impact Assessment', https://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessment, Accessed 10 February 2020.

[830] Icon Water, *Submission 62*, p. 3.

[831] Icon Water, *Submission 62*, p. 3.

single ESO and/or DA for packaged utility works across multiple sites to drive greater efficiencies for both proponents and regulators.'[832]

Recommendation 54

9.32 The Committee recommends that workflows of Environment Significance Opinions be incorporated into e-Development.

TREE PROTECTION

9.33 As indicated in Chapter 3 most trees on leased land in the ACT are protected under the *Tree Protection Act* 2005. Any work which may cause damage to these trees requires approval, such as tree removal, major pruning or lopping and groundwork within the Tree Protection Zone. [833]

9.34 The Transport Canberra and City Services (TCCS) Urban Trees unit is responsible for reviewing DAs that relate to trees on both private and public land.[834] The conservator may also be involved in this process.

9.35 The Committee was informed by Ms Gingell, on behalf of Friends of Hawker Village, that:

> Tree protection is expected by many in the community but engagement shows that it is inadequate under the current process. Developers have come to expect a blank canvas, and usually get it, rather than design around trees. The planning authority supports these developer expectations by permitting removal of trees through its internal review group. In established areas, it is in part trees that create the character of the older suburbs. Trees are also important to mitigate the heat island effect and to visually obscure the bulk and scale of infill developments.[835]

9.36 The Hughes Residents Association suggested that in relation to Tree Protection:

> …developers should be required to clearly identify in the DA documentation all mature trees on the site and on surrounding areas likely to be affected by the development or subject to building site traffic, including on nature strips, and clearly set out any trees which are proposed for removal.[836]

9.37 They also advocated that:

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[832] Icon Water, *Submission 62*, p. 3.

[833] City Services, 'Trees on leased land,' https://www.cityservices.act.gov.au/trees-and-nature/trees/trees-on-leased-land. Accessed 10 February 2020.

[834] ACT Government, *Submission No.42,* p. 10.

[835] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.

[836] Hughes Resident's Association, *Submission 40*, p. 7.

> Plans should be included with each DA for protection of existing trees, with compulsory orange tape barriers or metal cages at the drip line to protect the root systems of trees to be retained, including trees on the nature strip. The developer (not individual subcontractors) should be responsible for the survival and health of these trees and should face substantial penalties for damage to them.[837]

9.38 Whilst the Planning Institute of Australia (PIA) suggested that 'Tree Protection legislation could be simplified'[838] the Combined Community Councils of the ACT observed that 'the Tree Protection Act is abused by continual overruling of the Conservator's decision'[839]

9.39 Ms Gingell, on behalf of Friends of Hawker Village, noted that:

> The conservator focuses on tree species and tree condition, but we believe the focus should be on contribution to the character and residential amenity of the area. The only requirement is for the authority to consult the conservator, and there are no appeal provisions available to those who want the trees to remain.[840]

9.40 In their submission, Friends of Hawker Village suggested the need for better protection for regulated trees and advocated that as ACT Civil and Administrative Tribunal (ACAT) 'cannot review ACTPLA's tree removal decisions,' a review of both ACTPLAs approval powers and ACAT's review powers should occur.[841]

9.41 There were also concerns expressed by the PIA 'Other Planners workshop' that 'there was not sufficient punishment for persons who breached the Tree Act and removed trees prior to lodging a DA.'[842]

9.42 However, they also noted that the inability of the Tree Unit to consider the preferred development outcome as part of the DA process when it involved the need to remove trees created a barrier and delayed the DA process.[843]

9.43 The Housing Institute Australia (HIA) also noted that delays that proponents incurred when wanting to remove trees and suggested that:

> Projects that meet the exempt development criteria should be able to proceed where the tree will be within the footprint of the proposed dwelling or within 3 metres of that footprint.[844]

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[837] Hughes Resident's Association, *Submission 40*, p. 8.
[838] Planning Institute of Australia, *Submission 29*, p. 9.
[839] Combined Community Councils of the ACT, *Submission 21*, p. 2.
[840] Ms Gingell, *Transcript of Evidence*, 10 September 2018, p. 2.
[841] Friends of Hawker Village, *Submission 11*, pp. 4; 10.
[842] Planning Institute of Australia, *Submission 29*, p. 9.
[843] Planning Institute of Australia, *Submission 29*, p. 9.
[844] Housing Institute Australia, *Submission 47*, p. 1.

Recommendation 55

9.44 The Committee recommends that the Territory Plan Review reviews the process for considering registered and regulated trees during Development Application assessment.

HERITAGE CONSULTATION

9.45 As discussed in Chapter 3 the ACT Heritage Council advises on proposed developments when a place or object has heritage status.

9.46 Some jurisdictions make it mandatory to have members on their assessment/planning panels who have expertise in heritage matters (e.g. NSW, WA). Depending on the size and location of the development other jurisdictions have Heritage Councils or utilise powers of ministerial discretion to advise on or determine the outcome of development proposals that have heritage impacts.

9.47 In their submission Marshall and Pearson noted that the 'protection of identified ACT heritage places largely relies on the DA system to capture works that have the potential to impact on heritage values, and to refer those to the Heritage Council for advice' and queried as to whether all heritage matters within DAs are being referred to the ACT Heritage Council and if they are not, why?[845]

9.48 They raised concerns about the possible heritage matters that may be escaping referral in works that are exempt from a DA and through a lack of checks on developments with heritage conditions.[846]

> Certainly in the past, and I believe at the moment, there has been no consistent method of monitoring those things. There are no post-DA checks on whether the DA approval mechanisms have actually been carried out. And there are works for which a DA has not been lodged. We always suspected that there were minor works which were going on which have a heritage impact and, particularly in the heritage suburbs, a cumulative heritage impact: a little porch here, a little porch there, and suddenly you get a whole street of porches.[847]

9.49 Dr Pearson highlighted that this illustrated the need for a values-led approach to DAs:

> Having a better articulation of the values for the properties and how they would potentially impact on a design solution for that property is, in my view, part of the

[845] Marshall and Pearson, *Submission 3*, p. 3.
[846] Marshall and Pearson, *Submission 3*, p. 3.
[847] Dr Pearson, *Transcript of Evidence*, 10 September 2018, p. 86.

> process of having the pre-DA discussions in full before those designs are set in aspic and people's money and intellect are invested in those outcomes.[848]

9.50 He went on to tell the Committee that:

> —a code-based thing often does not work for heritage properties because it lacks the nuanced process of talking about values and how you can achieve successful outcomes and still keep values. It is hard to codify that. To have better up-front discussions before DAs are lodged is, I think, much more economically viable too.
>
> If you put all your efforts into coming up with your DA design proposals and then it goes into a grinding slow-down because heritage is concerned about it, heritage gets targeted. "Heritage is holding up development. Why should heritage be able to do that?" I say, "Change it around." Before you put in your DA, if you are dealing with a property which is on the heritage register, you have to go through the process of pre-DA discussions about the design and the appropriateness of the design to the conservation of the heritage values. If you do that then the DA process is not slowed down.[849]

9.51 The Committee was informed that identification of a place or site with identified heritage significance in the ACT was difficult. The Property Council noted that it:

> It would be very helpful for DA proponents to be able to easily gain early information on the heritage status of a place. This is currently hampered by the difficulty of navigating the ACT Heritage Register via the internet interface. For example, there are no simple search fields for street addresses, commonly used names, locations or suburbs. Instead the Block and Section numbers must be known prior to searching for a heritage place and this is counter-intuitive. The Register must be upgraded in the very near future and brought up to the exceptional standards of other Heritage Register's found in other state and territory jurisdictions.[850]

9.52 The National Trust echoed the frustration experienced by proponents with regards to access to information on heritage places:

> When a place is nominated to the ACT Heritage Register there is no available information of why, its significance and any possible controls making it difficult to prepare a Heritage Impact Statement with a DA.[851]

9.53 A number of industry groups also referred to the issues of accessibility. The Property Council suggested that 'there is a need to improve the accessibility of early and practical heritage

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[848] Dr Pearson, *Transcript of Evidence*, 10 September 2018, p. 89.
[849] Dr Pearson, *Transcript of Evidence*, 10 September 2018, p. 90.
[850] Property Council of Australia, *Submission 49*, p. 11.
[851] National Trust of Australia (ACT), *Submission 23,* p. 2.

advice to alleviate the perception of 'heritage issues' being a difficult factor in the final DA decision making.'[852]

Recommendation 56

9.54 The Committee recommends that the Directorate take steps to make the Heritage Register fully searchable.

UNDERSTANDING OF HERITAGE PROCESSES

9.55 Mr Marshall and Dr Pearson indicated that 'major developments, sometimes by government, can result in considerable political pressure on the heritage aspects of the DA process. This is not helped by a poor level of understanding about heritage processes, the role of the Heritage Council, and sometimes even antipathy towards heritage'[853]

9.56 Mr Marshall advocated that greater understanding of 'what heritage is and means and what is the proper role for heritage within the planning process' by all stakeholders in the DA process is needed:

> If there is a greater capacity to raise the heritage literacy amongst all those groups, including and perhaps especially within government, then I think the discussion generally can be much improved. To the extent that community and community groups feel that there is a heritage issue and want to express concern about that heritage issue and if they have a good understanding of what the Heritage Council thinks and means and how it operates in the heritage system and its advice through the planning system, then I guess the community contributions to that discussion, although they may disagree with the Heritage Council but if they fully understand or better understand the Heritage Council's role or the standards and processes being applied, will mean that maybe the conversation can be a more focused, sharper, more meaningful conversation without a lot of litigation.[854]

9.57 Marshall and Pearson noted that there was a particular lack of understanding about 'edge effects' and that this translated to developments that take place adjacent to heritage places, not receiving any input from the Heritage Council.[855]

9.58 They noted that this issue is addressed in other jurisdictions, including the Commonwealth, and is addressed in Article 8 of the *Australia ICOMOS Charter for Places of Cultural*

[852] Property Council of Australia, *Submission 49*, pp. 10-11.
[853] Marshall and Pearson, *Submission 3*, p. 3.
[854] Mr Marshall, *Transcript of Evidence*, 10 September 2018, pp. 92-93.
[855] Marshall and Pearson, *Submission 3*, p. 4.

Significance, The Burra Charter 2013,[856] 'the widely accepted national guidelines for heritage conservation in Australia:'[857]

> It has become a very important process, for example, in world heritage listing in relation to the world heritage requirements for buffer zones around properties, the purpose of which is to ensure that management of a zone around a listed property is not going to diminish the values for which you listed that property. They are usually about views in and out and about overshadowing, but they are also about major changes in character that go against the grain of why you listed the property.[858]

9.59 The Reid Residents Association also expressed concerns about the 'lack of oversight, appropriate penalties and enforcement' when it came to breaches of heritage requirements and retrospective DA approvals and highlighted the incongruity of how heritage matters are dealt with during reconsideration and review processes of major projects:

> It is unfathomable that under the current Reconsideration and Review process mandatory heritage requirements upheld by the ACT Heritage Council on DAs can be overturned by the Major Projects Review Group (MPRG) on grounds irrelevant to heritage...There is far too much wriggle room with regards to referrals to the Heritage Council that then can be overturned by MPRG, with a resulting perverse outcome for adjacent dwellings involving the following elements: architectural style, scale and building materials, siting and plot ratios, and the streetscape.[859]

9.60 In response the KBRG suggested that 'in relation to heritage matters all requirements listed as mandatory in the heritage regulations must be complied with. The word mandatory means such requirements are not negotiable' and that 'planning legislation should not allow for any mandatory requirements in Heritage legislation or other entity legislation to be overruled.'[860]

9.61 To assist in this process the Reid Residents Association also suggested that:

> …deliberations on DAs by the Heritage Council and other government agencies should be open and accessible, use methodologies based on clearly defined principles that take account the specific requirements for the conservation of the precinct, place or object as set out in the relevant Entry in the ACT Heritage Register and grounded on legislation.[861]

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[856] Australia – International Council on Monuments and Sites, 'Charters', https://australia.icomos.org/publications/charters/, accessed 12 October 2019.

[857] Marshall and Pearson, *Submission 3*, p. 4.

[858] Dr Pearson, *Transcript of Evidence*, 10 September 2018, p. 89.

[859] Reid Residents Association, *Submission 34,* pp. 1-3.

[860] Kingston and Barton Residents Group, *Submission 39*, p. 4.

[861] Reid Residents Association, *Submission 34,* p. 3.

HERITAGE ASSESSMENT TIMEFRAMES AND RESOURCES

9.62 Whilst acknowledging the importance of heritage assessments the Property Council expressed concerns at the weighting; number of, and context of such referrals. In particular they noted that most of these referrals do not have statutory timeframes and are not always sought early enough in the DA process. This introduces another level of uncertainty to timeframes and potentially causes reputational damage.[862]

9.63 The Directorate were asked if there is a statutory timeframe for the Heritage Council to make an assessment, and they confirmed that the timeframe is 15 working days for the formal DA process. During the pre-DA process, the Directorate confirmed they would not have a role in referring matters to the Heritage Council.[863]

9.64 When asked by the Committee if the Heritage Council has a timeframe to resolve concerns in a proposal that has been lodged, the Directorate indicated that if:

> …the planning authority has determined that that is a gap, we would ask for further information. That does add time onto the statutory processing time. Keep in mind, too, that with the statutory processing time we do not make a decision just to achieve that time frame…The ones that go out of time tend to be the ones that have identified issues. Then we do need to go backwards and forwards to resolve those issues. If we cannot, the application will be refused.[864]

9.65 However, the Committee was also told that:

> …the ACT Heritage Council and staff of ACT Heritage operate with very modest resources. Council members are part-time appointees, those with specialised skills related to DAs are very few, and the remuneration is only a small fraction of commercial rates for expert Council members. Similarly, the number of senior experienced and expert heritage staff able to deal with major DAs is tiny.[865]

9.66 The Reid Residents Association experiences with Reid Housing Precinct underpinned their view that:

> Sufficient resources (time and expertise) should be made available to investigate a DA within a heritage precinct so that it can be properly reconciled with the Heritage requirements. Heritage is about recognition and respect for what was created in a time past and conserved, but obviously not 'moth-balled,' for the future. Judgements made on DAs within heritage precincts such as RHP should be made by professionals with heritage expertise. Poor, rushed decisions can and do damage government and

[862] Property Council of Australia, *Submission 49*, p. 10.
[863] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 154.
[864] Mr Ponton *Transcript of Evidence*, 13 September 2018, p. 155.
[865] Marshall and Pearson, *Submission 3*, p. 3.

> privately built dwellings that, under mandated requirements, should accord with the unifying architectural style, scale and materials, central landscaped reserves and community facilities, trees and verges, driveways, street furniture and streetscapes to retain the very character and fabric of the heritage-listed precinct.[866]

9.67 Mr Marshall also acknowledged that 'faster input in major DAs would be assisted by increased resources' but emphasised the need for there to be sufficient time for matter to be fully considered:

> I am not insensitive to the problems of timing of any process but I guess it is not just timing per se but it is timing and resources…If the resources are there then people can have a meaningful engagement with it. But obviously there has to be a little time for people to be able to digest what is going on.[867]

COMMITTEE COMMENT

9.68 The Committee notes that during the conduct of the inquiry, additional funding was provided to the Heritage Unit for additional staffing to fulfil its role in the assessment of Development Applications.

Recommendation 57

9.69 The Committee recommends that the ACT Government commission an external review of the capability and resourcing of the Heritage Council and Heritage Unit to ensure they can meet their statutory and other responsibilities.

EXPANDED ROLE OF HERITAGE COUNCIL

9.70 Whilst the Heritage Council currently has an advisory role, final approval power is with the EPSDD. Mr Marshall noted that:

> …one of the problems is that heritage and the Heritage Council and the heritage unit become, if you like, almost soft targets for opposition. They are not big players in the planning process. They are advising the planning authority, which is one of the reasons we have said, "Think seriously about having a more toothy role for each council to be able to approve or not approve through the planning process—not as a separate process—a proposal which is going to impact on heritage values."[868]

[866] Reid Residents Association, *Submission 34,* p. 1.
[867] Mr Marshall, *Transcript of Evidence*, 10 September 2018, p. 91; Marshall and Pearson, *Submission 3*, p. 3.
[868] Dr Pearson, *Transcript of Evidence*, 10 September 2018, pp. 90-91.

9.71 In this context both Mr Marshall and Dr Pearson suggested that the Heritage Council should possibly have a 'independent and parallel decision making role in DAs.'[869] They indicated in their submission that the following points would support such a move:

- Such a change would give greater strength and authority to heritage issues in DA matters;
- The current situation relies upon the willingness of EPSDD to accept Heritage Council advice, and over time or in particular circumstances, ESPDD may become less accepting; and
- Such a change would reflect the situation in a number of other Australian jurisdictions.[870]

9.72 This perspective was shared by the Property Council who noted in their submission there is a need for parallel, or prior-approval role on DA's by the ACT Heritage Council, particularly for complex and major developments.'[871]

9.73 Marshall and Pearson assured the Committee that giving a decision making role to the Heritage Council would not 'disaggregate' the DA system and that it could simply become a pre-condition for DA approval.[872]

9.74 This was also supported by the Property Council, who suggested that 'early consultation with ACT Heritage to seek advice should be introduced as a pre-DA requirement.'[873]

Recommendation 58

9.75 The Committee recommends that the Territory Plan Review reviews the process for considering heritage matters during the Development Application assessment process.

Recommendation 59

9.76 The Committee recommends that the Directorate require pre-application consultation with the Heritage Unit for developments that affect a heritage place or object.

Recommendation 60

9.77 The Committee recommends that the National Capital Design Review Panel include a member with independent heritage expertise when considering Development Applications that include heritage matters.

[869] Marshall and Pearson, *Submission 3*, p. 2
[870] Marshall and Pearson, *Submission 3*, p. 2
[871] Property Council of Australia, *Submission 49*, p. 11.
[872] Marshall and Pearson, *Submission 3*, p. 2
[873] Property Council of Australia, *Submission 49*, p. 11.

10 COMPLIANCE ASSESSMENT AND ENFORCEMENT MEASURES

10.1 The Gungahlin Community Council observed that:

> It is a commonly held community view, that the whilst on paper there are sufficient compliance assessment and enforcement measures, in practice the Government fails to adequately implement these.[874]

10.2 They noted that this has resulted in a situation where:

- The community lack confidence in the DA process, reducing community engagement (e.g. there is no point putting a representation, the Government will approve the DA anyway);
- The community lacks faith in the Government's ability to protect its interests in the planning processes, thus leading to alarm and negative engagement on proposals, creating increased costs, litigation and suboptimal outcomes. If sufficient confidence existed residents would be more likely to engage in a positive matter and explore what is possible, leading to better outcomes for all stakeholders;
- There is a perception of a culture of industry non-compliance; and
- There is under reporting of non-compliance (i.e. why bother reporting non-compliance when nothing will come of it).[875]

10.3 The Reid Residents Association echoed these concerns, advocating that:

> Greater responsiveness by government should be considered an integral component of genuine engagement. Concerns raised by individuals and resident associations when observing breaches of the precinct's requirements need to be investigated and the results communicated quickly to those raising such concerns.[876]

10.4 The Griffith Narrabundah Community Association stated in their submission that a more 'responsive compliance and enforcement framework is needed':

> In particular there should be Government officials who are able to respond quickly to genuine resident concerns about non-compliant buildings, and sanctions (including fines) should be introduced for negligent or deliberate erroneous certifications and non-compliant constructions.[877]

10.5 The Directorate indicated in an Answer to a Question on Notice that:

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[874] Gungahlin Community Council, *Submission 22,* p. 4.
[875] Gungahlin Community Council, *Submission 22,* p. 4.
[876] Reid Residents Association, *Submission 34,* p. 3.
[877] Griffith Narrabundah Community Association, Submission 64, p. 2.

> It is the role of the building certifier and the builder/developer to ensure that they are completing development works in accordance with approved plans. If a development is undertaken not in accordance with an approval, the Act contains a number of compliance powers in Chapter 11 of the Act including controlled activity orders, rectification orders, prohibition notices and termination of licences and leases. In serious cases, the authority may revoke a development approval if satisfied that the approval was obtained by fraud or misrepresentation under section 189 of the Act.[878]

10.6 The Committee queried what actions the Government was taking to enforce compliance with planning and building laws. The Directorate stated in an Answer to a Question on Notice that:

> Access Canberra building inspectors undertake an annual audit program assessing compliance with planning and building laws. This is done through both desktop and onsite assessments. Access Canberra inspectors and compliance auditors assess approved building plans against the *Building Act 2004,* the *Planning and Development Act* 2007*,* the Building Code of Australia, and in the case of exempt development, the Territory Plan requirements. Through the audit programme, Access Canberra inspectors also undertake audits of building at various stages, assessing the physical structure against the approved building plans, development approval and legislative requirements.[879]

10.7 Of particular interest to the Committee was the nature and the frequency of complaints regarding building and planning matters. In an Answer to a Question Taken on Notice the Directorate stated that:

> …for the 2017-18 Financial Year, Access Canberra received 1,229 total building and planning complaints.
>
> The 1,229 complaints related to 1,022 specific sites.[880]

10.8 The Directorate was unable to specify how many of these related specifically to DAs:

> Complaints about building and planning compliance are initially categorised based on the content of the complaint received from the citizen. Complaints often relate to more than one allegation of non-compliance, for example a complaint could relate to building quality and compliance with development approvals. The system categorisation does not allow for multiple classifications and is therefore not a reliable indicator of the number of complaints made about a specific area.

[878] *Answer to Question On Notice No 8,* answered 9 October 2018.
[879] *Answer to Question On Notice No 18,* answered 2 October 2018.
[880] *Answer to Question On Notice No 1,* answered 4 October 2018.

> To determine the proportion of complaints that directly relate to development applications, Access Canberra would need…dedicated resources for…approximately 10 working days.[881]

BARRIERS TO ENFORCEMENT

10.9 Evidence provided to the Committee suggested that the most notable barrier to enforcement were grounded in the:

- Complaints process;
- Inadequate resourcing; and
- Application of powers and penalties.

COMPLAINTS PROCESS

10.10 The Planning Institute of Australia (PIA) told the Committee that the current mode of compliance is:

> …totally reactive It just requires a complainant to make an action first and then the compliance section determines whether or not they will take action from there.[882]

10.11 However, one of the main barriers to enforcement noted by submitters were the difficulties encountered when making complaints.[883]

10.12 Despite assertions on the EPSDD website that complainants are kept well informed during the complaints process, the Kingston and Barton Residents Group (KBRG) indicated that:

> When concerns and complaints are raised, for example by residents, no information is provided to them about what compliance measures are being followed up and privacy concerns are cited. This is not helpful in building public trust in the compliance system. It is also contrary to practice in other jurisdictions. Some basic information on the progress of compliance processes can be provided to concerned persons without violating privacy principles, as is done routinely with Commonwealth compliance regimes.[884]

10.13 The Environmental Defenders' Office (EDO) noted that these issues suggest a need to 'streamline' the complaints system:

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[881] *Answer to Question On Notice No 17,* answered 4 October 2018

[882] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, p. 54.

[883] See for example, Kingston and Barton Residents Group, *Submission 39*; Environmental Defenders' Office, *Submission 58*.

[884] Kingston and Barton Residents Group, *Submission 39*, p. 5.

> Currently, complaints are made through Access Canberra. The Access Canberra website is difficult to navigate. Clients who telephone Access Canberra are made to wait on hold for long periods of time. It is not clear who is responsible for complaints, and our clients have been transferred between one delegate and another. Once a complaint is made, the process of dealing with the complaint is not transparent. It is not clear what steps are being taken to resolve the issue, or why complaints do not eventually result on a brief to the OPP and an eventual prosecution. Without a transparent and accessible complaints and prosecution mechanisms, proponents breach legislation and regulations with impunity.[885]

10.14 The Committee indicated to the Directorate that the evidence suggests that going to Access Canberra is not particularly successful form of intervention. In response the Directorate acknowledged that there have been a significant number of complaints lodged and processed, but they did not have the details of how they were resolved.[886]

INADEQUATE RESOURCING

10.15 The Committee was informed that another barrier to enforcement was the lack of resourcing, with the KBRG noting:

> The Planning and Land Authority appear to have little resources to enforce compliance with the PD Act.[887]

10.16 They further indicated that:

> The compliance function seems to be under-resourced and slow to act on complaints. Building certifiers (usually employed by the builder) cannot be relied on to independently identify and manage issues of non-compliance with approvals. This means that public interest in good building quality and safety cannot be assured.[888]
>
> The only inspectors available for weekend or long weekend periods are WorkSafe officers. Unless the work being conducted is unsafe (or without an approved DA than it is hard to have them attend the site. Tree protection officers and staff who can issue a stopwork notification are not available on weekends and as such the KBRG has seen extensive works completed over Easter breaks and significant trees removed on weekends.[889]

10.17 KBRG also observed that:

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[885] Environmental Defenders' Office, *Submission 58*, p. 16.
[886] Mr Ponton, *Transcript of Evidence,* 13 September 2018, p. 162.
[887] Environmental Defenders' Office, *Submission 58*, p. 16.
[888] Kingston and Barton Residents Group, *Submission 39*, p. 5.
[889] Kingston and Barton Residents Group, *Submission 39*, p. 5.

> As inspections are not carried out at the completion of approved work, there is significant opportunity for proponents to stretch the scope of approved works. Inspections should be conducted and penalties issued for non-compliance or work done outside of approved DA works.[890]

10.18 Both the EDO and Inner South Canberra Community Council (ISCCC) suggested that the compliance responsibilities associated with planning and development should reside with EPSDD and that additional resourcing for the Authority and other relevant Directorates would improve responsiveness and enforcement capacity.[891]

10.19 It was also suggested that creating a mechanism for citizen enforcement of breaches could aid in removing the barriers to enforcement although details were not provided as to how that would transpire.[892]

APPLICATION OF POWERS AND PENALTIES

10.20 The Committee noted there was a growing perception in the community that in addition to the need for an increase in responsiveness to breaches of compliance, that there needs to be stronger action taken against those who are not compliant.

10.21 When speaking of her experience with the planning system Mrs Kouparitsas told the Committee that:

> The DA process is being treated as a joke by builders and certifiers. Even if they do have to lodge a DA, they simply build whatever they want knowing that Access Canberra will not make them knock it down.
>
> Perhaps if Access Canberra were to better enforce compliance with DAs and the building code, the builders and certifiers might act more responsibly.[893]

10.22 As discussed in Chapter 3, the approach to compliance and enforcement is usually 'Engage, educate and enforce.' However, Angela McGrath told the Committee in her submission that:

> Planning Authority's enforcement capability needs to be strengthened, including the power to stop developments that do not have an approval in force or do not comply with conditions that form part of the development approval (e.g. Tree Management plans, traffic management plans).[894]

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[890] Kingston and Barton Residents Group, *Submission 39*, p. 5.
[891] Environmental Defenders' Office, *Submission 58*; Inner South Canberra Community Council, *Submission 44*.
[892] Environmental Defenders' Office, *Submission 58,* p. 19.
[893] Mrs Kouparitsas, *Transcript of Evidence*, 13 September 2018, p. 119.
[894] Angela McGrath, *Submission 36*, p. 2.

10.23 KBRG expressed frustration 'that 'Education' is often seen as a solution even if it is clear the developer or builder is wilfully non-compliant and carries out such work at weekends when compliance staff are less available.'[895]

10.24 The Reid Residents Association advocated that in appropriate circumstances 'work should be stopped until the matter is sorted out'[896] and the Directorate explained that 'a stop work notice or seeking to rectify, either to alter or to seek retrospective approval' were options. They also told the Committee that 'another mechanism is to deal with the licensee themselves for having made the mistake.'[897]

10.25 Red Hill Regenerators also advocated for:

> A system of government sanctions for false, incomplete or misleading reports and consultant accreditations (based on their expertise and quality of their work) are urgently required.[898]

10.26 In contrast to community sentiment, industry bodies tended to support a more administrative as opposed to sanctions approach to compliance:

> But if that action, as I was mentioning, is not, "You must demolish and then lodge an application then build," and if the action is, "If that noncompliance can be rectified through a DA lodgement and there are not any major concerns," that is an appropriate administrative path to follow in many circumstances. [899]

10.27 The PIA noted that such an approach was particularly relevant in circumstances where 'products and materials shown on the development application at the time the design was done may not be available at the necessary time' so the developer takes their chances and seeks retrospective approval 'on the basis that the amendment is similar and is a minor change.'[900] However the PIA also noted that:

> If there are examples where applications are lodged and effectively the good design elements or what have you or the higher quality material are value-managed out of that process through the construction process, we would support the strongest action totally on that sort of approach. We do not support that at all. If a DA is lodged and it sells the story of the quality of the design outcome of that development, that should be entrenched…[901]

[895] Kingston and Barton Residents Group, *Submission 39*, p. 5.
[896] Reid Residents Association, *Submission 34,* p. 3.
[897] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 163.
[898] Red Hill Regenerators, *Submission 10*, p. 5.
[899] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, p. 54.
[900] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, pp. 54-55.
[901] Mr Fitzpatrick, *Transcript of Evidence*, 10 September 2018, p. 55.

CERTIFIER ACCOUNTABILITY

10.28 The common perception of certifiers, particularly private certifiers, was that:

> As certifiers depend on being hired for their livelihood, they need to satisfy their employer to ensure future employment. This is usually the developer rather than the inexperienced owner, leading to some pressure to turn a blind eye to inadequate compliance.[902]

10.29 Mr Kouparitsas told the Committee that 'there is no accountability as the owner pays the builder, who then in turn pays the certifier, which is a major conflict of interest. We feel it creates a closed loop.'[903]

10.30 In his submission John Edquist referred to a repot drafted by the Auditor General in 2014[904] in which a number of general conclusions were made in relation to certifiers and the actions of the Directorate in response to certifier decision making. Of note were the following:

> "Inadequacies were identified in the Directorate's safeguards to monitor the decisions of certifiers and mitigate the risk of improper influence. Importantly, there is no auditing undertaken of the fundamental decision made by a certifier on whether or not to exempt a development and therefore undertake the assessment themselves, rather than inform a homeowner that the development should be subjected to the Directorate's Development Application process. The need for these audits is highlighted in that certifiers incorrectly assessed developments as exempt in two case studies (Case Studies 1 and 7)"
>
> "Other inadequacies, which need to be addressed relate to certifiers' training, Directorate communication with certifiers, insufficient public material explicitly on exemption and certification, and the need to undertake targeted audits on a range of certifier compliance issues"
>
> "As the penalties for certifiers are small, these need to be reviewed to encourage compliance with relevant legislation and provide a disincentive to improper influence. An additional disincentive would be publicly reporting the demerit points of certifiers"[905]

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[902] Combined Community Councils of the ACT, *Submission 21*, p. 2.

[903] Mr Kouparitsas, *Transcript of Evidence*, 13 September 2018, p. 118.

[904] ACT Auditor Generals Performance Audit Report on Single Dwelling Development Assessments (Report No 3 of 2014), pp. 2-3, https://www.audit.act.gov.au/__data/assets/pdf_file/0006/1179906/Report-No-3-of-2014-Single-Dwelling-Development-Assessments.pdf.

[905] John Edquist, *Submission 43*, p. 2.

10.31 The Minster noted that he has 'heard reports that that is not being done properly' and told the Committee that 'we have started a process of ensuring that builders, in obtaining their licence, must do the right thing and listen to certifiers.'[906]

10.32 In an Answer to a Question on Notice the Directorate indicated that certifier compliance was undertaken by Access Canberra. They told the Committee that:

> Access Canberra undertakes a proactive program to monitor construction compliance. As part of that program, building certifiers are subject to targeted compliance audits. This involves a compliance assessment of the building approvals issued and on site compliance checking. In addition, as part of the budget process for 2018-19, Access Canberra received funding for two additional building inspectors which will enhance customer protection undertaking engagement, education and enforcement activities in the building and planning regulatory space.[907]

10.33 Whilst acknowledging that 'it is the role of the building certifier and the builder/developer to ensure that they are completing development works in accordance with approved plans' the Directorate, in an Answer to a Question on Notice, told the Committee that:

> If a development is undertaken not in accordance with an approval, the Act contains a number of compliance powers in Chapter 11 of the Act including controlled activity orders, rectification orders, prohibition notices and termination of licences and leases. In serious cases, the authority may revoke a development approval if satisfied that the approval was obtained by fraud or misrepresentation under section 189 of the Act.[908]

10.34 A number of submitters suggested that greater 'oversight' of certifiers through random audits is also necessary.[909] In response the Directorate indicated to the Committee that through the Construction Occupations Registrar, Access Canberra can also take separate action against the certifier in terms of their licence.[910]

10.35 The ISCCC and Dr Dobes, on behalf of the Griffith Narrabundah Community Association noted that appropriate sanctions were also necessary for certifiers who do not comply and suggested the following to ensure enforcement of compliance with codes and rules:

- penalties should be increased to a significant level for a certifier's non-compliance with relevant Acts and codes.

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[906] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 160.

[907] *Answer to Question On Notice No 10,* answered 4 October 2018.

[908] *Answer to Question on Notice No 8,* answered 9 October 2018.

[909] See for example, Jane Goffman, *Submission 27,* p. 1; Inner South Canberra Community Council, *Submission 44*; Combined Community Councils of the ACT, *Submission 21.*

[910] Mr Ponton*, Transcript of Evidence*, 13 September 2018, p. 162.

- there should be public reporting of a certifier who has been found to have incorrectly assessed the exempt status of a development proposal.[911]

10.36 The Combined Community Councils of the ACT identified 'a need for education of the community about the process and an accessible list of approved certifiers along with increased Government supervision.'[912] To assist in this process It was also suggested that certifiers reports should be made public with their names and documented reasons for assessments made against every rule and criteria.[913]

10.37 It was noted by the ISCCC that:

> …a lot of people who have knockdown rebuilds done may not even know that it is their right to appoint an independent certifier. They might just assume that it is the builder who appoints the independent certifier. There is a lot of lack of knowledge about people's right to appoint their own independent certifier.[914]

10.38 The Minister noted that this was indeed the case:

> On many occasions the proponent is unaware that they could be linked. They do not have the full capacity to understand that they should choose a separate certifier, for example. Either way, though, the certifier is supposed to do that particular job certification in the correct way.[915]

10.39 The Directorate told the Committee that there have been efforts in the past to educate people so they are aware of their responsibilities in this space:

> It is important to note, though, that it is not the builder who appoints the certifier. The directorate and also Access Canberra have done quite a bit of work over the past six to 12 months to educate people who are moving into this space—people who are interested in building a home—that it is their responsibility to appoint a certifier.[916]

ALTERNATIVE METHODS OF OBTAINING CERTIFICATION

10.40 In their submission the PIA made a number of suggestions about possible alternative processes that could be explored in relation to the operation of certifiers:

> Private Planning Certification could be acceptable for minor developments, particularly if additional development were added to the Code Track development table under the land use zones…There may be opportunities for ACTPLA to use independent non-

[911] Inner South Canberra Community Council, *Submission 44*, p. 6; Dr Dobes, *Transcript of Evidence*, 10 September 2018, p. 15.

[912] Combined Community Councils of the ACT, *Submission 21*, p. 3.

[913] John Edquist, *Submission 43*, p. 2.

[914] Ms Fasteas, *Transcript of Evidence*, 13 September 2018, p. 112.

[915] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 160.

[916] Mr Ponton, *Transcript of Evidence*, 13 September 2018, p. 161.

> government planners to assist with the DA Assessment process and sign-off on minor developments freeing up ACTPLA resources for the more significant projects.[917]

10.41 However, the PIA acknowledged that:

> There are currently perceived issues with building quality which may mean that there is a reluctance of the community to accept further 'privatisation' of the planning and development process….[and that] it is considered that the community would hold a perception that the private certifier would not refuse certification in case they don't get future work from the proponent.[918]

10.42 They noted that if this plan was to go ahead private certification 'would need adequate compliance resourcing to maintain quality, standards and reputation… there would be a need for a greater level of review/audit than currently occurs with Building Certifiers' [919] A number of submitters suggested that greater 'oversight' of certifiers through random audits is also necessary with the current arrangements.[920]

10.43 Another option proposed by the PIA involved the proponent not directly paying the certifier. These included a system where 'a private certifier assessed the DA anonymously, then reported to ACTPLA for final sign-off' or the establishment of 'a 'pool of planners' with the specific planner for a certain DA being selected by ACTPLA.'[921]

10.44 In contrast the Combined Community Councils of the ACT proposed that:

> A thorough cost analysis should be undertaken to determine whether it would be less expensive for the Government to revert to full Government inspection of all developments (at developer expense) and to do away with private certification.[922]

10.45 Minister Gentleman in responding to this suggestion, told the Committee that:

> Firstly, the history of certification is that it was done within government at a point.
>
> The industry felt that government was not performing. They wanted to have it done in the private sector. The community supported that. There was a decision made for certification to become private. Of course, the process is that when you are doing a development, you select a builder. You then select a certifier as well.[923]

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[917] Planning Institute of Australia, *Submission 29*, p. 11.

[918] Planning Institute of Australia, *Submission 29*, p. 11.

[919] Planning Institute of Australia, *Submission 29*, p. 11.

[920] Jane Goffman, *Submission 27,* p. 1; Inner South Canberra Community Council, *Submission 44*; Combined Community Council ACT, *Submission 21.*

[921] Planning Institute of Australia, *Submission 29*, p. 11.

[922] Combined Community Councils of the ACT, *Submission 21*, p. 2.

[923] Minister Gentleman, *Transcript of Evidence*, 13 September 2018, p. 160.

COMMITTEE COMMENT

10.46 In addition to the recommendations below, the Committee has made recommendations in Chapter 7 that relate to the issues that have been raised in this chapter, including giving the Authority to reject DAs that contain false or misleading material, additional fees for retrospective DAs and limiting 'Exempt' development in existing suburbs to only low-impact development. The latter would significantly limit the role of private certification in the planning system.

10.47 The Committee notes that planning compliance and enforcement in the context of the terms of reference for the Committee and the terms of reference for this inquiry relate primarily to compliance and enforcement of planning legislation and DA approvals. This includes the actions of private certifiers, albeit principally in their role in approving 'Exempt' developments and associate issues related to perceived conflicts of interest.

10.48 Generally the policy and enforcement of building regulations, private building certifiers and construction occupations licencing are encompassed in the terms of reference for the Standing Committee on Economic Development and Tourism (EDT Committee). The EDT Committee has been conducting a parallel inquiry on *Building Quality in the ACT*[924] which in part is considering the certification regime for the building and construction industry. Whilst the EDT Committee has not yet tabled its report it is anticipated that a number of this Committee's recommendations will inevitably overlap recommendations made by the EDT Committee in its report.

10.49 The Committee also notes that during the conduct of the inquiry, there appears to have been a significant increase in the robustness of the ACT Government's approach to compliance, with high-profile developments being issued with a Stop Work notice for development not in accordance with valid DA.

Recommendation 61

10.50 The Committee notes the more robust approach to planning enforcement that commenced during the conduct of this Inquiry, and recommends that the ACT Government maintain and strengthen this approach.

Recommendation 62

[924] Legislative Assembly for the Australian Capital Territory, 'Inquiry into building quality in the ACT', https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-economic-development-and-tourism/inquiry-into-building-quality-in-the-act, Accessed 10 February 2020.

10.51 The Committee recommends that Access Canberra business processes are changed to ensure that following a planning related complaint being made, the complainant is kept informed of the status of their complaint.

Recommendation 63

10.52 The Committee recommends that Access Canberra's resources are further expanded to ensure a higher level of customer service can be provided to complainants without reducing their inspection and compliance effort.

11 DEVELOPMENT APPLICATIONS AND THE PLANNING FRAMEWORK

11.1 The Inner South Canberra Community Council (ISCCC) emphasised the need for planning in the ACT to have 'the right policy framework, the right governance framework, the underpinning regulatory framework and the resourcing to back it all up.'[925]

11.2 The Woden Valley Community Council concurred and told the Committee that:

> …the underpinning planning that supports the precinct needs to be stronger and agreed by the community. Where the precinct code or the plan for the precinct does not really deliver the built form that the community would like or the public spaces that the community like, or protect the environment in a way that the community would like, you are inevitably going to have complaints about the DAs when they come in.[926]

11.3 The Red Hill Regenerators also spoke about the need to have 'strategic plans that are meaningful and long lasting':

> …whether it is the Territory Plan, a master plan, an integrated plan, whichever you do, that basically says, "This is what's going to happen on this piece of land, not just over the next two years but over a long term." We have been going 30 years, and I do not see why we cannot have a plan that basically thinks that far ahead and gives that longer term certainty.[927]

11.4 When asked if they were considering a national process or model for how planning systems should work, the Directorate indicated in an Answer to a Question on Notice that:

> The previous restructure of the Territory Plan was based on the national Development Assessment Forum (DAF) model however the ACT was the only jurisdiction to follow this model. There is no current national best practice model therefore one is not being considered at this time.[928]

[925] Ms Fasteas, *Transcript of Evidence*, 13 September 2018, p. 116.
[926] Ms Carrick, *Transcript of Evidence*, 13 September 2018, p. 116.
[927] Dr Mulvaney, *Transcript of Evidence*, 10 September 2018, p. 83.
[928] *Answer to Question on Notice No 5*, answered 2 October 2018.

DEVELOPMENT APPLICATIONS AND THE TERRITORY PLAN

11.5 The interaction of the Territory Plan with the DA process came under heavy criticism with many claiming a disconnect between the two:

> The key concern is the Territory Plan Codes themselves where there is opportunity to achieve exceptional development outcomes, but the DA assessment system has, over time, been diminished and now basic assessment against numerical rules prevails to the detriment of consideration of performance standards to achieve quality development.[929]

11.6 The PIA 'Other Planners workshop' indicated that 'any quality outcomes are possibly achieved in spite of the Territory Plan, rather than because of it.'[930]

11.7 Jane Goffman indicated in her submission to the inquiry that:

> What struck me when I first began reading the Territory Plan's new Codes in 2010 was that for some bizarre reason the ACT has uncoupled the rules and criteria, divorcing them and treating them as independent, when the intention from the beginning was that the criteria would serve to explain the basis for and context of a rule in order that applicants appreciate what the rule is about and if for some valid reason they couldn't meet a minimum numeric standard they were then free to find good design solutions that responded to their particular circumstances and which they could argue on the grounds of merit with reference to the criteria.[931]
>
> The ACT's approach to structuring its development codes has inadvertently sterilised what was originally meant to be a progressive and enlightened response by the planning system to enable better architecture and design overall than if strict and rigid numeric rules were the sole basis for decision making. In practice this has produced an either or environment where mediocrity flourishes and good design is no longer encouraged.[932]

11.8 The PIA also referred to the lack of information and guidance in the Territory Plan:

> Specifically, the zone objectives do not provide clear guidance as to what one should expect in specific zones. Similarly, the Territory Plan Codes make numerous references to "desired character", however, this is rarely enunciated in the Codes.[933]

[929] Planning Institute of Australia, *Submission 29*, p. 5
[930] Planning Institute of Australia, *Submission 29*, p. 5.
[931] Jane Goffman, *Submission 27*, p. 2.
[932] Jane Goffman, *Submission 27*, p. 2.
[933] Planning Institute of Australia, *Submission 29*, p. 5.

> Where it is not explicitly refenced in a Precinct Code the applicant is required to relate back to the zone objectives, which give no real guidance in relation to desired character.[934]

11.9 It was advocated that 'precinct codes should underpin planning principles to facilitate the right DAs coming forward to provide good outcomes for the community'[935] and the ISCCC maintained that 'the best plan is to try to minimise disputes and ambiguities in the development codes so that the scope for misunderstanding and disagreements is minimised.'[936]

11.10 A number of community groups suggested that this could be achieved by having:

- the quantitative rules set the minimum standard in the development codes;[937]
- subjective terms and language removed from the criteria;[938]
- removal of the qualitative Criteria;[939]
- strengthening the rules by making, in a sense, the criteria much more deliberative with respect to breaking the rules for good reasons.[940]

11.11 The PIA 'Government workshop' also noted that 'the number of current Codes and their length (number of Rules/Criteria in each Code) was a significant failure in the system' and suggested there should be a better link between the 'numerical standards expressed in Rules to the performance standards required under a corresponding criterion.'[941]

11.12 Despite the highlighted ambiguities within the Territory Plan the Property Council told the Committee that the 'rigidity' of the Territory Plan 'limits the innovation and creativity that Government Policy is seeking to achieve'

> The Territory Plan in its complexities, overly relies on technical outcomes that can often be in conflict with other policy attributes. The disconnect between the intent of the Plan and delivered outcomes creates friction in the development approval process and delivers sub-optimal outcomes, and therefore presents an opportunity for improvement. Marginalising the debate or compliance on the technical solutions of compliance, both in assessment and ACAT can compromise design outcomes.[942]

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[934] Planning Institute of Australia, *Submission 29*, p. 5.
[935] Woden Valley Community Council, *Submission 54*, p. 6.
[936] Inner South Canberra Community Council, *Submission 44,* p. 5.
[937] Inner South Canberra Community Council, *Submission 44,* p. 5.
[938] Inner South Canberra Community Council, *Submission 44,* p. 5.
[939] Griffith Narrabundah Community Association, Submission 64, p. 2.
[940] Mr Stanton, *Transcript of Evidence*, 13 September 2018, p. 116.
[941] Planning Institute of Australia, *Submission 29*, p. 6.
[942] Property Council of Australia, *Submission 49*, p. 4.

11.13 In this context the Directorate were asked by the Committee to provide further information about the Territory Plan and the upcoming review, and in an Answer to a Question on Notice indicated that:

> The scope of the Territory Plan review is still being determined however it will consider the Territory Plan as a whole and how it works in the planning system.[943]

COMMITTEE COMMENT

11.14 The Committee notes that some evidence provided to the Committee was in support of the role of criteria in providing flexibility, whilst other evidence took the view that developments should be required to comply with simple numerical rules only. Additionally there was a view that 'tick-and-flick' rules should be supplemented by a test that determines if the development represents a good outcome.

11.15 It is evident to the Committee that simple rules versus flexibility and versus outcomes assessment is a long-term, unresolved debate within the planning field nationally and internationally. The Committee believes it is a matter that should be considered as part of the Territory Plan Review, and the Committee has not taken a view.

Recommendation 64

11.16 The Committee recommends that the Territory Plan Review consider whether the Merit Track should be changed so that Development Applications are not just assessed against minimum standards (tick and flick approach) but are also assessed on the overall outcome of the development.

Recommendation 65

11.17 The Committee recommends that the Territory Plan Review consider the role of simple rules versus flexible criteria.

DEVELOPMENT APPLICATIONS AND MASTER PLANS

11.18 The Combined Community Councils ACT told the Committee that:

> Master planning is really important. Focusing on the long term, when taking short-term decisions, is indispensable for consistency as well as for the injecting of wisdom of communities into our future. Master planning is as important as it is foundational.

[943] *Answer to Question on Notice No 5*, answered 2 October 2018.

> However, plans need be translated into firm constraints on short-term developments. Precinct codes, the first step in translation, are also the first step in the battle to put master planning strength into the Territory Plan.[944]

11.19 The Planning Institute of Australia (PIA) noted that there was a disconnect between Master Plans and the Territory Plan:

> The Consultant workshop expressed concern that Master Plans are produced but then not linked to the Territory Plan, so they therefore raise expectations in the community but fail to influence the development assessment process.
>
> While the Master Plans express the desired future character for specific areas, the Master Plans have no statutory weight, and consideration of a DA rests with the wording in the Territory Plan Codes. The future desired outcomes are not transposed from Master Plan to Territory Plan. Many Codes include various criteria that require a development to be consistent with the 'desired character'. The desired character is rarely expressed in the Codes, which requires the applicant to then refer to the objectives of the relevant zone. A cross-reference to 'desired character' in any adopted Master Plan would add strength to the DA assessment process. A lot of resources are put into Master Plans and community consultation and then the community expects that will be the outcome. However, that is not how it works and can cause more harm than good for planners when presenting new developments. Recent examples where the Master Plan was presented to the community together with the proposed Territory Plan Variation attached to it, to ensure that the Master Plan has statutory effect soon after adoption, is supported by PIA ACT.[945]

A DESIGN-LED PLANNING SYSTEM

11.20 The Property Council told the Committee that they believed 'that a design-led approvals process would yield the best outcomes for our city' and that 'the current format of the Territory Plan creates limitations when addressing design-lead outcomes or seeking to resolve criteria-based approach to solutions.'[946]

11.21 The Property Council also advocated a shift towards not designing by process but to thinking about outcomes. They noted that this would work if proponents, designers, planners and developers are allowed to innovate and are not 'designing around process' so as to avoid 'point[s] of contention.'[947]

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[944] Mr Stanton, *Transcript of Evidence*, 13 September 2018, p. 95.
[945] Planning Institute of Australia, *Submission 29*, p. 10.
[946] Property Council of Australia, *Submission 49*, p. 4.
[947] Ms Rohde, *Transcript of Evidence*, 10 September 2018, p. 28.

> With the design-led outcomes process you are seeing in most of the submissions, having a look at the submissions coming through, people want to be able to innovate and talk about that early. Our current planning process, with the pre-application system, does not allow that. We have been advocating for some time to be able to go in very early with some sketches on paper—that is unusual; an architect is going to be saying this—and talk early about the options. We are passionate about the outcomes for these developments. In a pre-application process, it is very hard to do that, because customer services and so forth request that drawings come in.[948]

11.22 The Australian Institute of Architects (AIA) also supported a design-led approvals process

> We would like to see a design-led and outcomes-based approvals process that will foster design excellence and flexibility and deliver quality planning outcomes in our city. At the moment our view is that design quality has been constrained by a rigid set of rules accompanied by a tick-box approach to the processing of DAs where quality design is being watered down so it can make that tick-box approach work through to the next stage.[949]
>
> In our industry there is the ability for our industry to look at an alternative solution path or a performance solution path. The major projects review path is one path to that where you focus on the design outcome rather than the rules and criteria. We have talked about mediation and the ACAT appeals process itself. If that discussion were more around the design outcome rather than the legal view of the criteria, we would probably get some better outcomes. If mediation were more about that discussion—what are we trying to achieve here with a development, what is the best outcome we can get?—rather than arguing around the rules and criteria, we would probably get better outcomes for our city.[950]

11.23 The Property Council told the Committee that they could see the potential for the Design Review Panel to be part of a process that enabled 'a development to be considered on a design and merit-based process.' They stated that 'in this process, the Panel would consider both presentations from the community and the applicant and provide a determination which design related matters would be exempt from third party appeals process, unless there is an error in law.'[951]

Recommendation 66

11.24 The Committee recommends that the Territory Plan Review rectify the disconnect between the Development Application process, as per the Territory Plan, and key design and

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[948] Mr McPherson, *Transcript of Evidence*, 10 September 2018, p. 28.
[949] Mr Leeson, *Transcript of Evidence*, 10 September 2018, p. 42.
[950] Mr McPherson, *Transcript of Evidence*, 10 September 2018, p. 45.
[951] Property Council of Australia, *Submission 49*, p. 10.

character elements that are articulated in master plans, planning refresh's and zone objectives.

12 DEVELOPMENT APPLICATION PROCESSES IN OTHER AUSTRALIAN JURISDICTIONS

12.1 This chapter reviews development application (DA)[952] practices and principles used in other Australian jurisdictions as of January 2020. While the DA process is broadly similar across the country, significant differences do exist which can make simple comparisons difficult.

12.2 Whilst detailing approaches used in other states and territories, the chapter begins with a description of the Development Assessment Forum's (DAF) Leading Practice Model.

DEVELOPMENT ASSESSMENT FORUM

12.3 There have been efforts at all levels of government to bring a degree of uniformity to DA processes across jurisdictions. These efforts have largely stalled in recent years. In 1998 the Development Assessment Forum (DAF) was established to bring together a wide range of stakeholders, from both inside and outside of government, to consider how development assessments across Australia could be improved.

12.4 The DAF sought to 'provide advice and recommendations to Local Government and Planning Ministers and stimulate an ongoing discussion about the opportunities for development assessment reform'.[953]

LEADING PRACTICE MODEL

12.5 In 2005 the DAF produced a Leading Practice Model to inform efforts by the Australian States and Territories in the reform of their DA processes. The Model seeks to 'guide the various jurisdictions in developing efficient, effective and nationally harmonised development assessment systems'.[954]

12.6 According to the DAF, 'almost every jurisdiction has now adopted elements of the DAF Leading Practice Model into their planning systems'.[955]

12.7 The Leading Practice Model proposes:

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[952] Depending on jurisdiction DA can refer to 'development application', 'development assessment', or 'development approval'.

[953] Development Assessment Forum, 'What is the Forum?', http://daf.asn.au/about-the-development-assessment-forum, Accessed 11 September 2018.

[954] Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*, March 2005, p. 1.

[955] Development Assessment Forum, 'Leading Practice Model', http://daf.asn.au/leading-practice-model , Accessed 11 September 2018.

- Ten leading practices that a DA system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.

- Six 'tracks' that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.[956]

12.8 DAF's ten Leading Practices are[957]:

1. **Effective policy development**:

   Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.

2. **Objective rules and tests**:

   Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

3. **Built-in improvement mechanisms**:

   Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across jurisdictions.

4. **Track-based assessment**:

   Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard.

   Adoption of any track is optional in any jurisdiction, but should remain consistent with the model if used.

5. **A single point of assessment**:

   Only one body should assess an application, using consistent policy and objective rules and tests.

[956] Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*, March 2005, p. 1.

[957] Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*, March 2005, pp. 2-3.

Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process.

Referral agencies should specify their requirements in advance and comply with clear response times.

6. **Notification**:

   Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

7. **Private sector involvement**:

   Private sector experts should have a role in development assessment, particularly in:

   - Undertaking pre-lodgement certification or applications to improve the quality of applications.
   - Providing expert advice to applicants and decision makers.
   - Certifying compliance where the objective rules and tests are clear and essentially technical.
   - Making decisions under delegation.

8. **Professional determination for most applications**:

   Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:

   Option A—Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council.

   Option B—An expert panel determines the application.

   Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

9. **Applicant appeals**:

   An applicant should be able to seek a review of a discretionary decision.

   A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

10. **Third-party appeals**:

Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests.

Opportunities for third-party appeals may be provided in limited other cases.

Where provided, a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

12.9 The six assessment tracks proposed by the DAF are:[958]

1. Exempt
2. Prohibited
3. Self assess
4. Code assess
5. Merit assess
6. Impact assess.

12.10 According to the DAF, each track will 'provide a process of assessment that is relevant to the project's complexity and impact on the built and natural environments'.[959]

DEVELOPMENT ASSESSMENT SYSTEMS IN OTHER JURISDICTIONS

12.11 The Local Government and Planning Ministers' Council has noted that 'each State and Territory in Australia administers its own Development Assessment system. While there are some key features that are common to all jurisdictions, terminology, processes and statutory requirements do vary'.[960] The general outline of the DA process in each Australian jurisdiction, apart from the ACT, is described in the remainder of this chapter.

[958] Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*, March 2005, p. 3.

[959] Development Assessment Forum, *A Leading Practice Model for Development Assessment in Australia*, March 2005, p. 4.

[960] Local Government and Planning Ministers' Council, 'First National Report on Development Assessment Performance, 2008/09', p. 5, https://www.transportinfrastructurecouncil.gov.au/sites/default/files/First_National_Report_Development_Assessment_Performance_2008-09.pdf, Accessed 10 February 2020.

NEW SOUTH WALES

12.12 Developments in NSW require approval from a council, a Regional Panel, a Sydney planning panel, or, from the Minister of Planning. The types of developments requiring such approval range from residential house extensions to major infrastructure projects such as roads and ports.

12.13 Some types of development, which have a minor impact or can be carried out in compliance with accepted building and environmental standards, do not require approval from a consent authority.

12.14 State and local planning legislation and policies determine what types of developments are acceptable on what land. The regulatory hierarchy setting the rules for development in NSW is as follows:

1. *Environment Planning and Assessment Act 1979* (the Act)
2. Environment Planning and Assessment Regulation 2000
3. Environment Planning Instruments (EPIs):
    - State Environmental Planning Policies (SEPPs)
    - Local Environment Plans (LEPs)
4. Development Control Plans.[961]

12.15 Currently, there are nine categories of development operating in NSW:[962]

1. Exempt Development
2. Complying Development
3. Local Development
4. Regional Development
5. State Significant Development
6. State Significant Infrastructure

[961] NSW Government, 'Your guide to the Development Application process: small housing development', May 2018, p. 11, http://www.planning.nsw.gov.au/~/media/Files/DPE/Manuals-and-guides/da-best-practice-guide-for-homeowners-2018-06-07.ashx , Accessed 31 January 2020.

[962] NSW Government, 'Planning Approval Pathways', <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways> , Accessed 3 February 2020.

7. Part 3A development

8. Development without Consent

9. Designated Fishing Activities.

12.16 The *Environment Planning and Assessment Act 1979* also stipulates that some developments are prohibited 'if an environmental planning instrument provides' that they are prohibited.[963]

12.17 The most common type of development is the Local Development, ranging from home extensions to medium-sized commercial, retail and industrial developments. A development is categorised as a Local Development if:

- A LEP or SEPP states that development consent is required before the development can take place; and
- It is not considered either a Regional or State Significant Development.[964]

12.18 In most cases, consent for Local Developments is issued by the local council, but SEPP can specify the Minister for Planning as the consent authority.[965] Councils will also usually require public notification of DAs and may make referrals to other NSW government agencies for consultation or concurrence.[966]

12.19 Some Local Developments will be categories as Designated Developments and/or Integrated Developments.

12.20 Designated Developments are 'developments that are high-impact developments (e.g. likely to generate pollution) or are located in or near an environmentally sensitive (e.g. a wetland)'. DAs for these types of developments need to include an environmental impact statement, require at least a 28-day public notification period, and 'can be the subject of a merit appeal to the Land and Environment Court by objectors'.[967]

12.21 Integrated Developments are developments which require referral to NSW government departments and agencies due to the operation of multiple Acts. Further:

> The consent authority must refer the development application to the relevant public authority and incorporate the public authority's general terms of approval. It must not approve the development application if the agency recommends refusal. If the advice

[963] *Environment Planning and Assessment Act* 1979 (NSW), section 4.3.

[964] NSW Government, 'Local Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Local-Development , Accessed 31 January 2020.

[965] NSW Government, 'Local Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Local-Development , Accessed 31 January 2020.

[966] NSW Government, 'Your guide to the Development Application process: small housing development', May 2018, p. 25, http://www.planning.nsw.gov.au/~/media/Files/DPE/Manuals-and-guides/da-best-practice-guide-for-homeowners-2018-06-07.ashx , Accessed 31 January 2020..

[967] NSW Government, 'Local Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Local-Development , Accessed 31 January 2020.

is not received in 21 days after the agency has received the application or requested additional information, the consent authority can determine the development application.[968]

12.22 For other DAs which require referral to an NSW government department or agency, the relevant council must take into consideration the comments of the referral authority when making a determination on the DA.[969]

12.23 While local councils make determinations on DAs which are straightforward, for sensitive and high-value DAs, councils in Sydney and the Wollongong City Council will make use of local planning panels (LPPs), formerly known as Independent Hearing and Assessment Panels (IHAPs), to make a determination. LPPs s were made compulsory for all Sydney councils and Wollongong City Council on 1 March 2018 to ensure 'the process of assessment and determination of DAs with a high corruption risk, sensitivity or strategic importance are transparent and accountable'.[970] LPPs are also now mandatory for the Central Coast Council.[971]

12.24 The LLP consists of four members: a chair, two independent expert members, and one community member. Panel chairs are required to have expertise in law, or government and public administration. Panel members are required to have expertise in one or more of the following fields: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. 'Councillors, property developers and real estate agents are ineligible to be Panel members as this undermines the objective of having DAs determined by independent experts, depoliticising the assessment process'.[972]

12.25 Regionally Significant Developments are developments considered to be of regional significance. These include:[973]

- Development with a capital investment value (CIV) over $30 million
- Development with CIV over $5 million which is:
  - Council related
  - Lodged by or on behalf of the Crown (State of NSW)

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[968] NSW Government, 'Local Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Local-Development , Accessed 31 January 2020.

[969] For example, see: Eurobodalla Shire Council, 'Step 6: referral and consultation', http://www.esc.nsw.gov.au/development-and-planning/development-applications/the-development-process/step-6-referrals-and-consultation , Accessed 31 January 2020.

[970] NSW Government, 'Independent Hearing and Assessment Panels', https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Independent-Hearing-and-Assessment-Panels , Accessed 31 January 2020.

[971] NSW Government, 'Local Planning Panels Overview', <https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/local-planning-panels-overview-2019-11-26.pdf, Accessed 31 January 2020.;NSW Government, 'Local Planning Panels;, <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Local-Planning-Panels> , Accessed 31 January 2020.

[972] NSW Government, 'Independent Hearing and Assessment Panels', https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Independent-Hearing-and-Assessment-Panels , Accessed 31 January 2020.

[973] NSW Government, 'Regional Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Regional-Development , Accessed 31 January 2020.

- Private infrastructure and community facilities
- Eco-tourist facilities.

- Extractive industries, waste facilities and marinas that are designated development
- Certain costal subdivisions
- Development with CIV between $10 million and $30 million which is referred to the Planning Panel by the applicant after 120 days.

12.26 Depending on the policy of the local council, the assessment process for Regional Significant Developments can include public exhibition of the DA and acceptance and examination of public submissions by the council.[974] Regional Development applications are submitted to the local council which carries out a professional assessment for the determination of the relevant Regional Planning Panel.

12.27 Planning Panels, introduced on 1 July 2009, are independent bodies established 'to strengthen decision making on regionally significant development applications and certain other planning matters'.[975]

12.28 Planning Panels consist of five members, three (including the Chair) appointed by the Minister (State members), and two nominated by the relevant council (council members). Council members on the Planning Panel will change depending on the location of the matter under consideration, with the relevant local council nominating the council members.[976]

12.29 All Planning Panel members appointed by the Minister must have expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism, or government and public administration. At least one council member must have expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, or tourism.[977]

12.30 There are two categories of Planning Panel: 1) Sydney Planning Panels, and 2) Joint Regional Planning Panels. The following Planning Panels operate in NSW:[978]

Sydney Planning Panels **Joint Regional Planning Panels**

[974] NSW Government, 'Regional Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Regional-Development , Accessed 31 January 2020.

[975] NSW Government, Planning Panels, 'About Us', http://www.planningpanels.nsw.gov.au/AboutUs/tabid/64/language/en-US/Default.aspx , Accessed 31 January 2020.

[976] NSW Government, Planning Panels, 'About Us', http://www.planningpanels.nsw.gov.au/AboutUs/tabid/64/language/en-US/Default.aspx , Accessed 31 January 2020.

[977] NSW Government, 'Planning Panels Operational Procedures', September 2016, p. 9, http://www.planningpanels.nsw.gov.au/Portals/0/JRPP_Documents/Planning%20Panels%20Operational_Procedures_2016.pdf , Accessed 31 January 2020.

[978] NSW Government, Planning Panels, 'About Planning Panels', https://www.planningportal.nsw.gov.au/planning-panels/about-planning-panels, Accessed 31 January 2020.

- Sydney Eastern City
- Sydney Central City
- Sydney Western City
- Sydney North
- Sydney South
- Hunter and Central Cost
- Northern
- Southern
- Western

12.31 Planning Panels do not operate in the City of Sydney Council area and do not determine developments considered to be State Significant Developments.[979]

12.32 State Significant Developments are types of development considered to have significance for the State due to their size, economic value or the potential social and environmental impacts the development may have. State Significant Developments are determined either by the Department of Planning and Environment or the Independent Planning Commission.

12.33 Consent for State Significant Developments is provided by the Independent Planning Commission if such developments are not supported by relevant councils; or if the Department of Planning and Environment has received more than 25 public objections; or if such developments have been proposed by a person who has disclosed a reportable political donation in connection with the development application.[980]

12.34 The Independent Planning Commission was established on 1 March 2018. The Commission 'operates independently of the NSW Department of Planning and Environment and has an important role to play in building community confidence in the decision-making processes for major development and land-use planning state-wide'. Commission members 'are appointed by the Minister for Planning based on their qualifications and considerable expertise in a diverse range of planning-related fields'.[981]

12.35 For some State Significant Developments, the Department of Planning and Environment may require the establishment of a Community Consultative Committee to facilitate engagement with the community on a specific development. The decision to require the establishment of a Community Consultative Committee will depend on: 'the scale and nature of the project and potential impacts; the level of public interest in the project; the proponent's community

[979] NSW Government, Planning Panels, 'About Us', http://www.planningpanels.nsw.gov.au/AboutUs/tabid/64/language/en-US/Default.aspx , Accessed 31 January 2020.

[980] NSW Government, 'State Significant Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/State-Significant-Development , Accessed 31 January 2020.

[981] Independent Planning Commission, 'About Us', http://ipcn.nsw.gov.au/about-us , Accessed 31 January 2020..

engagement strategy; and whether a Community Consultative Committee would complement any other initiatives being undertaken'.[982]

12.36 The purpose of a Community Consultative Committee is 'to provide a forum for discussion between a proponent and representatives of the community, stakeholder groups and the local council on issues directly relating to a specific State significant project'.[983]

12.37 Some low-impact, straightforward residential, commercial and industrial developments that require approval can receive fast-track approval as Complying Developments. The Complying Development application process combines planning and construction approval with assessment by a council or an accredited certifier. Examples of this type of development include new dwellings, alterations to existing houses, new industrial buildings, demolition of buildings, and changes to a business use.[984]

12.38 Under the Act, DA applicants can appeal against the refusal to grant consent by the consent authority to the Land and Environment Court. Third parties who have made a submission on a DA during the submission period and are not satisfied with the consent authority's determination can also appeal to the Court, in certain circumstances.[985]

12.39 In NSW, the DA process consists of five stages:[986]

1. Pre-lodgement
2. Lodgement
3. Assessment
4. Determination
5. After Decision

[982] NSW Government, 'Community Consultative Committee Guidelines', November 2016, p. 3, http://www.planning.nsw.gov.au/~/media/Files/DPE/Guidelines/community-consultative-committee-guidelines-state-significant-projects-2016-10.ashx , Accessed 31 January 2020.

[983] NSW Government, 'Community Consultative Committee Guidelines', November 2016, p. 2, http://www.planning.nsw.gov.au/~/media/Files/DPE/Guidelines/community-consultative-committee-guidelines-state-significant-projects-2016-10.ashx , Accessed 31 January 2020.

[984] NWS Government, 'Complying Development', http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Complying-development , Accessed 31 January 2020.

[985] Land and Environment Court, 'What is a development appeal?', http://www.lec.justice.nsw.gov.au/Pages/types_of_disputes/class_1/Development-appeals-process/devappeals_whatis.aspx , Accessed 31 January 2020.

[986] '5 states to faster, more efficient assessments', https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/5-stages-to-faster-more-efficient-assessments-infographic.pdf, Accessed 31 January 2020.

VICTORIA

12.40 Development in Victoria can require approval from local councils or the Minister for Planning. The DA process may involve Minister-appointed independent planning panels, Advisory Committees and/or Environment Effects Inquiries. DAs may also need to be referred to a range of government agencies and undergo pubic notice of varying degrees.

12.41 The hierarchy of key planning instruments within the Victorian planning system is as follows:

1. *Planning and Environment Act 1987* (Vic.) (the Act);
2. Planning and Environment Regulations 2005 (Vic.);
3. Ministerial Directions;
4. Victorian Planning Provisions; and
5. Planning schemes.[987]

12.42 The Act and the Planning and Environment Regulations sets the legal framework for the planning system in Victoria.

12.43 Ministerial Decisions and the Victorian Planning Provisions are made by the Minister under the Act and 'ensure that the construction and content of planning schemes is consistent across Victoria'.[988]

12.44 A planning scheme:

> …is a statutory document that sets out the planning rules in each municipality. A planning scheme is constructed using the Victorian Planning Provisions as a template. Planning schemes contain both policies and planning controls. Policies are used to inform and guide planning decisions. Planning controls include zones, overlays, and particular provisions. They generally provide for any permit requirements and prohibitions on land use and development.[989]

12.45 Planning schemes allow for three process outcomes for DAs:

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[987] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, p. 9, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

[988] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, p. 9, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

[989] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, p. 9, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

1. Allow a particular development or use without a permit, generally subject to the fulfilment of certain conditions;

2. Require approval for a permit with or without conditions; or

3. Prohibit a specific development or use from occurring.[990]

12.46 Where required, planning permits are issued by the responsible authority/planning authority. In most cases, the responsible authority is the local council. Once a DA is submitted to the responsible authority, the application may be referred to other government agencies, more information may be requested from the applicant, and/or public notice concerning the DA may be given.[991]

12.47 In order to make changes to a place or object in the Victorian Heritage Register, a permit or permit exemption is required from Heritage Victoria. The Heritage Council and Heritage Victoria need to consider a variety of principles, guidelines and legislation when deciding whether to grant or refuse a permit application. The Heritage Council can also grant permit exemptions that allow certain works to take place without a heritage permit. [992]

12.48 There are two types of referral authority: a determining referral authority and a recommending referral authority. Both types of authority can object to a DA, not object to a DA, or specify conditions to be included in a permit. If a determining referral authority objects to a DA, 'the responsible authority must refuse to grant a permit', or include any conditions stipulated by the determining referral authority. By contrast, if a recommending referral authority objects to a DA, 'a responsible authority must consider the recommending referral authority's advice but is not obliged to refuse the application or include any recommended conditions'.[993]

12.49 Public notice for DAs is not necessary where 'the planning scheme specifically indicates that advertising is not required, or where the responsible authority is satisfied that the proposal will not have a negative impact or cause material detriment to any person'. In all other cases, public notice must be given to:

> …owners and occupiers of adjoining land, unless the responsible authority is satisfied that granting a permit would not cause material detriment to any person; the council, if the proposal applies to, or may materially affect, land within its municipal district;

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[990] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, p. 53, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

[991] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, pp. 54-55, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

[992] Victoria State Government 'Apply for a permit', <https://www.heritage.vic.gov.au/permits/apply-for-a-permit?_ga=2.106216778.89718886.1581895062-674358815.1581050455>, Accessed 21 February 2020.

[993] Victoria State Government, 'Referral and Notice Provisions', June 2015, https://www.planning.vic.gov.au/__data/assets/pdf_file/0021/97311/PPN54-Referral-and-Notice-Provisions_June-2015.pdf , Accessed 21 February 2020.

> any persons specified for notice under the planning scheme; and any other person whom the responsible authority considers may incur material detriment as a result of a proposal.[994]

12.50 The Act allows that 'any person who may be affected by the grant of the permit may object to the grant of the permit'.[995] Such objections can be submitted until the responsible authority makes its decision on a DA. Objections 'must be made to the responsible authority in writing stating the reasons for the objection and stating how the objector would be affected by the grant of the permit'.[996]

12.51 Some DAs can be submitted via Victoria's electronic planning portal, VicSmart, for streamlined assessment. VicSmart's key features are:

- A 10 day permit process;
- Applications are not advertised;
- Information required to be submitted with a DA is pre-set;
- The Chief Executive Officer of the council or a delegate decides the DA.[997]

12.52 Types of developments eligible for VicSmart approval include: minor subdivisions; buildings and works; tree removal and lopping; small advertising signs; car parking reductions.[998]

12.53 The Minister for Planning can 'call-in' a DA which is yet to be determined by the responsible authority for determination by the Minister or their delegated authority. The Minister may call-in DAs for a range of reasons:

- The DA raises a major policy issue and the determination of the DA may have a substantial impact on the achievement of planning objectives;
- The decision on the DA has been unreasonably delayed to the detriment of the applicant;
- The DA is required to be considered by the Minister under an Act other than the Planning and Environment Act and determination would be facilitated by the referral of the DA to the Minister.[999]

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[994] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, pp. 56-57, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

[995] *Environment and Planning Act 1987* (Vic.), section 57(1).

[996] *Environment and Planning Act 1987* (Vic.), section 57(2).

[997] Victoria State Government, 'VicSmart—a simpler planning permit process', https://www.planning.vic.gov.au/planning-permit-applications/vicsmart , Accessed 21 February 2020.

[998] Victoria State Government, 'VicSmart: Applicant's Guide to lodging a VicSmart application', March 2018, p. 4, https://www.planning.vic.gov.au/__data/assets/pdf_file/0032/94775/Applicants-Guide-to-Lodging-a-VicSmart-Application.pdf , Accessed 21 February 2020.

[999] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, p. 61, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

12.54 In some cases, the Minister may appoint an independent planning panel to consider DAs called in by, or referred to, the Minister. Planning panels can also be appointed to consider amendments to planning schemes.

12.55 Planning panels receive submissions, hold public hearings, hear evidence from relevant experts, make site inspections, and provide written reports to the responsible authority on proposed amendments to planning schemes and specific DAs. If the responsible authority disagrees with the report of the planning panel, it must inform the Minister of the reasons for the disagreement and provide other information to the Minister as required under the Act.[1000]

12.56 Members of planning panels are usually chosen by the Chief Panel Member, who is delegated by the Minister for Planning. Members are usually selected based on:

- The experience or expertise required by the subject matter of the panel;
- The likely length of the panel hearing; and
- The availability of panel members.[1001]

12.57 The Minister may also appoint an Advisory Committee to consider proposals or review planning policies. Advisory Committees are appointed with Terms of Reference and generally fall under one of the following categories:

- Proposals for a specific site, usually for a particular development of that site;
- To review planning controls or policy that does not necessarily apply to a particular site or area, for example, car parking and planning provisions; or
- Matters called-in by the Minister for Planning from the Planning and Environment List of the Victorian Civil and Administrative Tribunal, known as Appeal call-ins.[1002]

12.58 Similarly, the Minister may appoint an Environment Effects Inquiry to inquire into the environmental effects of any works or proposed works to which the *Environment Effects Act 1978* applies. Members of Advisory Committee and Environmental Effects Inquiries are appointed directly by the Minister for Planning.[1003]

12.59 Environmental Effects Statements (EES) are used to assess the potential impacts or effects of a proposed development. If an EES is required, the preparation of a Cultural Heritage

[1000] Planning Panels Victoria, 'What is a Panel?', https://www.planning.vic.gov.au/__data/assets/word_doc/0028/98182/G8-What-is-a-Panel-April-2015.DOCX , Accessed 21 February 2020.

[1001] Victoria State Government, 'Planning panel FAQs', https://www.planning.vic.gov.au/panels-and-committees/planning-panel-guides/planning-panel-faqs , Accessed 21 February 2020.

[1002] Planning Panels Victoria, 'Guide to Committee and Inquiries', https://www.planning.vic.gov.au/__data/assets/word_doc/0032/98177/G7-Guide-to-Committees-and-Inquiries-April-2015.DOCX , Accessed 21 February 2020.

[1003] Victoria State Government, 'Planning panel FAQs', https://www.planning.vic.gov.au/panels-and-committees/planning-panel-guides/planning-panel-faqs , Accessed 21 February 2020.

Management Plan becomes mandatory under the provisions of the Aboriginal Heritage Act 2006.[1004]

12.60 Reviews of DA decisions can be brought to the Victorian Civil and Administrative Appeals Tribunal (VCAT) by:

- An objector lodging an application for review of the council's decision to grant a planning permit. This must be done within 21 days of the notice of the decision (to grant a permit);
- An applicant lodging an application for review of the council's decision to refuse a permit or any condition included in the permit. This must be done within 60 days of the decision; and
- An applicant lodging an application for review because the council has not made a decision within 60 days of the DA being lodged. This is called 'failure to determine'.[1005]

12.61 VCAT decisions may be appealed to the Supreme Court by any party of the VCAT proceeding, provided that it relates to a question of the law.[1006]

QUEENSLAND

12.62 Most DAs in Queensland are assessed by local governments, usually councils, which act as the assessment manager. Where the state has an interest in a DA, the State Referral and Assessment Agency (SARA) acts to assess that interest.[1007] 'State involvement in development assessment occurs only when it is essential'. State involvement can occur, 'for example, where a matter requires state protection and has a certain level of risk or requires expertise that is only available at the state level'[1008]

12.63 The hierarchy of planning instruments in Queensland is as follows:

1. *Planning Act 2016/Regional Planning Interests Act 2014*;
2. Planning Regulation 2017/Regional Planning Interests Regulation 2014;
3. State Planning Policy (SPP)/Regional plans;

[1004]Victoria State Government, 'Environment Assessment', https://www.planning.vic.gov.au/environment-assessment/what-is-the-ees-process-in-victoria, Accessed 21 February 2020.

[1005] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, p. 61, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

[1006] Kristin Richardson, Bronwen Merner, 'An Introduction to Victoria's Planning System: A Guide for Members of Parliament', Parliament of Victoria, April 2013, p. 75, https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13746-planning , Accessed 21 February 2020.

[1007] Queensland Government, 'Queensland's new planning system', https://dsdmipprd.blob.core.windows.net/general/NewPlanningSystem_v4.pdf , Accessed 21 February 2020.

[1008] Queensland Government, 'State Planning Policy', July 2017, p. 3, https://dsdmipprd.blob.core.windows.net/general/spp-july-2017.pdf , Accessed 21 February 2020.

4. Planning schemes/Temporary local planning instruments/planning scheme policy; and,

5. Development Assessment Rules/Minister's Guidelines and Rules.[1009]

12.64 The *Planning Act* 2016 (Planning Act)sets the framework for Queensland's planning system. It aims 'to establish an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning, development assessment and related matters that facilitate the achievement of ecological sustainability'.[1010] The *Regional Planning Interest Act 2014* 'seeks to strike a balance between protecting priority land use and managing the impacts of (and supporting coexistence with) mining and petroleum activities, which are outside the jurisdiction of the Planning Act'.[1011]

12.65 The Planning Act sets the framework for the development assessment system: 'for implementing planning instruments and other policies about development by—

i. Categorising development;

ii. Categorising types of assessment for particular development;

iii. Stating the processes for making, receiving, assessing and deciding development applications; and

iv. Establishing rights and responsibilities in relation to development of key infrastructure'.[1012]

12.66 The Planning Regulation 2017 'supports the principal planning laws by outlining the mechanics for the operation of the Planning Act'. The Regulation documents such matters as:

- How development applications are categorised;
- Who will assess DAs; and,
- Matters that trigger state interests.[1013]

12.67 The *Economic Development and Other Legislation Amendment Act* 2019 was introduced following a review of the *Economic Development Act* 2012 (ED Act) which focused on planning and development assessment. Provisions relating to development assessment largely came into force on 9 December 2019. Key amendments include:

[1009] Queensland Government, 'Better Planning for Queensland', http://www.betterplanning.qld.gov.au/resources/planning/better-planning/better-planning-instrument-hierarchy-factsheet.pdf , Accessed 21 February 2020.

[1010] *Planning Act 2016* (Qld), section 3(1).

[1011] Queensland Government, 'The legislation', https://planning.dsdmip.qld.gov.au/planning/our-planning-system/the-legislation , Accessed 21 February 2020.

[1012] *Planning Act 2016* (Qld), section 4(f).

[1013] Queensland Government, 'The legislation', https://planning.dsdmip.qld.gov.au/planning/our-planning-system/the-legislation , Accessed 21 February 2020.

- More flexible time frames for planning in priority development areas (PDAs) to respond to new or different circumstances;
- Improvements to the PDA development application process;
- Improved interaction between the ED Act and a number of other Acts; and
- A new way of declaring provisional PDAs.[1014]

12.68 State Planning Policy (SPP) 'sets out the state's interest in land-use planning and development across Queensland'.[1015] SPP sits above Regional plans and planning schemes and applies, to the extent relevant, when:

- Making or amending local planning instruments;
- Making or amending a regional plan;
- Local government is assessing a DA, if its planning scheme has not yet appropriately integrated the relevant SPP state interest policies;
- An assessment manager or referral agency other than local government is assessing a DA.[1016]

12.69 Regional plans 'are made through collaboration with local governments, residents, key industry groups and the wider community so that everyone's interests are considered'. They seek to 'support growth and development in the regions while protecting each region's natural resources along with the interests of the state'. Local governments are required to give consideration to the relevant regional plan when formulating their local planning scheme.[1017]

12.70 Local planning schemes 'describe a council's plan for the future direction of a particular local government area'. Planning schemes:

- Identify the strategic outcomes for the area;
- Include measures that facilitate achieving the strategic outcome;
- Identify the preferred growth pattern;
- Coordinate and integrate community, state, and regional interests;
- Include a local government infrastructure plan.[1018]

[1014] Queensland Government, 'State Development, Manufacturing, Infrastructure and Planning - Legislation' https://www.statedevelopment.qld.gov.au/economic-development-qld/about-edq/legislation.html, Accessed 21 February 2020.

[1015] Queensland Government, 'State Planning Policy (SPP)', https://planning.dsdmip.qld.gov.au/planning/better-planning/state-planning/state-planning-policy-spp , Accessed 21 February 2020.

[1016] Queensland Government, 'State Planning Policy', July 2017, p. 7, https://dsdmipprd.blob.core.windows.net/general/spp-july-2017.pdf , Accessed 21 February 2020.

[1017] Queensland Government, 'Regional plans', https://planning.dsdmip.qld.gov.au/planning/better-planning/state-planning/regional-plans , Accessed 21 February 2020.

[1018] Queensland Government, 'Local Planning under SPA', https://planning.dsdmip.qld.gov.au/planning/spa-system/plan-making-under-spa/local-planning-under-spa , Accessed 21 February 2020.

12.71 A planning scheme is 'a legally binding plan that considers state and regional planning interests, as well as local matters, and is a collaborative effort between councils and their communities'.[1019]

12.72 The 'Minister's Guidelines and Rules' is a statutory instrument which, *inter alia*, sets out how councils 'make or amend local planning instruments', including planning schemes and local government infrastructure plans.[1020]

12.73 The 'Development Assessment Rules' set out the standard process through which every DA is assessed, from lodgement to decision. The Rules 'ensure all applications are assessed with the right information, by the right people, and follow the same process'.[1021]

12.74 DAs fall into three categories: prohibited, accepted, assessable:

- Prohibited developments are developments which are not allowed 'under any circumstances'. Prohibited developments are stipulated in the Planning Regulation 2017;
- Accepted developments are developments that do not require an application or approval. 'Accepted development is generally simple, low risk and completely compatible with the planning intentions for an area'; and
- Assessable developments require a DA and decision by an assessment manager. Assessable developments fall into two categories: code and impact.[1022]

12.75 Code assessable DAs 'are assessed against the relevant assessment benchmarks set out in the council's planning scheme. Where the application meets criteria, it will be approved. If it does not meet some criteria, that part of the application can be refused or approved with conditions'. Code assessment helps to reduce assessment times and does not require public notification.[1023]

12.76 Impact assessable DAs also have to be assessed against relevant assessment benchmarks prescribed in the planning scheme and in regard to matters prescribed by regulation, but are also required to undergo a public notification process.[1024]

12.77 For developments that are assessable, the Development Assessment Rules stipulates five key parts to the DA process—application, referral, information request, public notification, and

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[1019] Queensland Government, 'Local Planning', https://planning.dsdmip.qld.gov.au/planning/better-planning/local-planning, Accessed 21 February 2020.

[1020] Queensland Government, 'Local Planning', https://planning.dsdmip.qld.gov.au/planning/better-planning/local-planning, Accessed 21 February 2020.

[1021] Queensland Government, 'The development assessment process', https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process , Accessed 21 February 2020.

[1022] Queensland Government, 'Types of assessment', https://planning.dsdmip.qld.gov.au/planning/better-development/types-of-assessment , Accessed 21 February 2020.

[1023] Queensland Government, 'Types of assessment', https://planning.dsdmip.qld.gov.au/planning/better-development/types-of-assessment , Accessed 21 February 2020..

[1024] Queensland Government, 'The development assessment process', https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process , Accessed 21 February 2020.

decision.[1025] Depending on the specific circumstance for each DA, 'the required steps in each part may vary'.[1026]

12.78 Additionally, while not a required step in the DA process, the Queensland Government recommends that applicants contact the assessment manager—usually the council—and any referral agencies involved in a DA prior to lodgement. 'This will identify any potential issues of additional information requirements that can help the application track through the system smoothly'. Whether such pre-lodgement consultation is possible, and whether this is free or at a cost, is at the discretion of the local government.[1027]

12.79 Following lodgement, some DAs require referral to other government agencies. Where the state has an interest in a DA, the State Assessment and Referral Agency (SARA) 'assesses state aspects of the development'.[1028]

12.80 In cases where SARA acts as the assessment manager or referral agency for a DA, SARA offers free pre-lodgement services to applicants.[1029]

12.81 Also in cases where SARA is the assessment manager or referral agency, applicants can lodge their DA through Queensland's online lodgement system—MyDAS2. The system allows:

- Online lodgement of DAs (not in cases where the local government is the assessment manager);
- Tracking through development assessment;
- Integration with the DA mapping system; and
- Electronic payment of fees.[1030]

12.82 The Property Council has commented in relation to SARA that 'Queensland stands alone in the creation and adoption of its State Assessment and Referral system for the coordination of state agency inputs into the assessment of development projects' and that 'SARA represents the best existing practice in the nation'.[1031]

12.83 Division 3 of the Planning Act provides for the Minister to 'call in' a DA for the Minister to:

[1025] Queensland Government, 'Development Assessment Rules', March 2017, http://betterplanning.qld.gov.au/resources/planning/better-planning/da-rules.pdf , Accessed 21 February 2020.

[1026] Queensland Government, 'The development assessment process', https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process , Accessed 21 February 2020.

[1027] Queensland Government, 'The development assessment process', https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process , Accessed 21 February 2020.

[1028] Queensland Government, 'Queensland's planning system: How it works', https://dsdmipprd.blob.core.windows.net/general/queenslands-planning-system-how-it-works.pdf , Accessed 21 February 2020.

[1029] Queensland Government, 'The development assessment process', https://planning.dsdmip.qld.gov.au/planning/better-development/the-development-assessment-process , Accessed 21 February 2020.

[1030] Queensland Government, 'MyDAS and eDA', https://planning.dsdmip.qld.gov.au/planning/spa-system/development-under-spa/development-assessment-under-spa/mydas-and-eda , Accessed 21 February 2020.

[1031] The Property Council, *Cutting the Costs: Streamlining State Agency Approvals*, November 2017, pp. 15, 25, http://files.propertycouncil.com.au/hubfs/_RDC/WebFiles/RDC_CuttingTheCosts.pdf , Accessed 21 February 2020.

(a) assess and decide, or reassess and re-decide, all or part of the application; or

(b) if the call in notice is given before the decision-maker decides the application—

(i) direct the decision-maker to assess all or part of the application; and

(ii) decide the application, or part of the application, based on the decision-maker's assessment.[1032]

12.84 In calling in a DA for determination, the Minister must 'state the reasons for the call in, including the State interest giving rise to the call in'.[1033]

12.85 In Queensland, an environmental impact statement (EIS) may be required. The process for obtaining an EIS is listed under the *Environmental Protection Act* 1994 (EP Act) and is used to assess resource project proposals that have a relatively high level of environmental risk. These projects are often also important to the economic development in Queensland and typically involve high capital expenditure and the potential to generate substantial regional development and employment.[1034]

12.86 In deciding whether an application requires assessment by EIS, the Environment, Land, Water and Planning Department will carry out its functions and responsibilities in accordance with the EP Act.[1035] There are four stages for a site-specific EA application: the Application Stage; the Information Stage (when a decision is made on whether an EIS will be required); the Notification Stage, and the Decision Stage. [1036]

12.87 There are two types of EIS assessment processes in Queensland:

- EIS under the *Environmental Protection Act 1994* (EP Act), administered by the Department of Environment and Science.
- EIS under the *State Development and Public Works Organisation Act 1971* (SDPWO Act), administered by the Coordinator-General, Department of State Development, Manufacturing, Infrastructure and Planning. [1037]

12.88 A Heritage Impact Statement (HIS) should also be included with an application for proposed development on a State Heritage Place or proposed material change of use development on land adjoining a State Heritage Place. A HIS identifies and evaluates the extent of potential

[1032] *Planning Act 2016* (Queensland), s. 105(1).

[1033] *Planning Act 2016* (Queensland), s. 103(3)(a).

[1034] Queensland Government, 'About the EIS process', <https://www.qld.gov.au/environment/pollution/management/eis-process/about-the-eis-process/does-my-project-need-an-eis>, Accessed 21 February 2020.

[1035] Queensland Government, 'About the EIS process', <https://www.qld.gov.au/environment/pollution/management/eis-process/about-the-eis-process/does-my-project-need-an-eis>, Accessed 21 February 2020.

[1036] Environmental Impact Statement Process, pp. 4-5, <https://www.qld.gov.au/__data/assets/pdf_file/0019/109072/eis-gl-environmental-impact-statement-process.pdf>, Accessed 21 February 2020.

[1037] Queensland Government, 'About the EIS process', < https://www.qld.gov.au/environment/pollution/management/eis-process/about-the-eis-process/types-of-eis>, Accessed 21 February 2020.

impact that a proposed development will have on the cultural heritage significance of a State Heritage Place.[1038]

12.89 Queensland's planning system provides two fora for dispute resolution concerning DAs: 1) the Planning and Environment Court, and 2) the Development Tribunal. The Court 'hears matters relating to planning and development, protection for the environment and coasts, marine parks, conservation areas and more'.[1039] The Tribunal 'provides a low-cost, speedy dispute-resolution option on certain technical matters' which are set out in the Planning Act.[1040]

12.90 Third party appeals against the determination of a council to allow a development are only available for those who have made a submission concerning an impact assessable DA. Submitters must make such appeals to the Planning and Environment Court within 20 days of the council's decision.[1041]

WESTERN AUSTRALIA

12.91 In Western Australia the majority of DA determinations are issued by local government—councils—which are delegated as the responsible authority by the Western Australia Development Commission (WAPC).

12.92 The principal legislative instrument governing development in Western Australia is the *Planning and Development Act 2005* (P&D Act). The purpose of the P&D Act is 'to provide for an efficient and effective land-use planning system in the State, and promote the sustainable use and development of land in the State'. The P&D Act functions as the 'enabling legislation for most of the tasks undertaken by the WAPC, DoP [Department of Planning] and local government in progressing planning and development for WA'.[1042]

12.93 In addition to the P&D Act, the Western Australian planning system is shaped by planning strategies, policies, and schemes at the state and local levels.

12.94 The State Planning Strategy 'provides a strategic framework and identifies principals, strategic goals and strategic directions for planning and development in Western Australia'.[1043] The

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[1038]Department of Environment and Heritage Protection, Queensland Government, 'Guideline: State Development Assessment Provision, p.7. s', p. 7, <https://www.qld.gov.au/__data/assets/pdf_file/0020/67133/sdap-heritage-statement.pdf> , Accessed 21 February 2020.

[1039] Queensland Courts, 'Planning and Environment Court', https://www.courts.qld.gov.au/courts/planning-and-environment-court , Accessed 21 February 2020.

[1040] Queensland Government, 'Queensland's new planning system', https://dsdmipprd.blob.core.windows.net/general/NewPlanningSystem_v4.pdf , Accessed 21 February 2020.

[1041] Brisbane City Council, 'Assessment State 6: Appeals', https://www.brisbane.qld.gov.au/planning-building/applying-post-approval/how-development-applications-are-assessed/assessment-stage-6-appeals , Accessed 21 February 2020..

[1042] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 6, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1043] Government of Western Australia, 'Western Australian Planning Framework', https://www.dplh.wa.gov.au/getmedia/75967422-d0bc-421e-84f5-055663ab5426/SPP_1_State_Planning_Framework , Accessed 10 March 2020.

current State Planning Strategy is encapsulated in the *State Planning Strategy 2050*. The Strategy:

> …is the highest order planning instrument in the Western Australian planning system. It is built on the web of interconnections that currently exist across government.
>
> It provides the strategic context for future strategies, plans, policies and decisions related to the sustainable use and development of land throughout the State.[1044]

12.95 State Planning Policies 'provide the highest level of planning policy control and guidance in Western Australia'.[1045] Local governments and the WAPC 'must have "due regard" to the provisions of state planning policies when preparing or amending local planning schemes and when making decisions on planning matters'.

12.96 Regional planning schemes are statutory mechanisms to 'assist strategic planning, the coordination of major infrastructure' and set aside areas for 'regional open space and other community purposes'. Regional planning schemes are developed by the WAPC and are approved by state parliament. Currently, there are three regional schemes in operation:

- Metropolitan Region Scheme;
- Peel Region Scheme; and
- Greater Bunbury Region Scheme.[1046]

12.97 The local planning strategy 'establishes the planning framework for each local government, and provides the strategic basis for local planning schemes'. It 'sets out the local government's objectives for future land-use planning and development, and includes a broad framework by which to pursue those objectives'. Local planning strategies must be consistent with state and regional planning strategies, policies and schemes.[1047]

12.98 At the local government level, the local planning scheme is the 'principal statutory tool for achieving a local government's aims and objectives with respect to the development of its local area, subject to compliance with the State Government's statutory and strategic planning framework'.[1048] Local planning schemes 'set out the way land is to be used and developed, classify areas for land use and include provisions to coordinate infrastructure and development

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[1044] Government of Western Australia, *State Planning Strategy 2050*, p .8, https://www.dplh.wa.gov.au/projects-and-initiatives/planning-for-the-future/state-planning-strategy-2050 , Accessed 21 February 2020.

[1045] Government of Western Australia, 'Western Australian Planning Framework', https://www.dplh.wa.gov.au/getmedia/75967422-d0bc-421e-84f5-055663ab5426/SPP_1_State_Planning_Framework , Accessed 10 March 2020; Government of Western Australia, 'State planning policies', https://www.dplh.wa.gov.au/policy-and-legislation/state-planning-framework/state-planning-policies, Accessed 21 February 2020.

[1046] Government of Western Australia, 'Region planning schemes', https://www.dplh.wa.gov.au/information-and-services/district-and-regional-planning/region-planning-schemes, Accessed 21 February 2020.

[1047] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 13, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1048] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 19, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

within the local government area'.[1049] The Minister for Planning makes the final decision on local planning schemes and amendments to local planning schemes.[1050]

12.99 Local planning policies can be established by a local government 'to provide additional information about the position that local government will take on certain planning matters'. The WAPC will not review or endorse local planning policies, but these must be consistent with state planning policies.[1051]

12.100 For all developments, other than those specifically exempted in the relevant local planning scheme, a DA must be submitted to the local government for determination or referral. Where necessary, the local government will give public notification of the DA and receive submissions on it. The local government will also refer DAs to 'any other statutory, public or planning authority it considers appropriate'.[1052]

12.101 In some instances the local government will refer DAs 'for developments on or abutting certain regional reserves, or for certain classes of development that the WAPC wants to retain control over' to the WAPC for its determination.[1053]

12.102 The WAPC:

> …responds to the strategic direction of government on urban, rural and regional land-use planning and land development matters throughout Western Australia. The Commission comprises a Chair and 16 members, representing industry, government and the community.
>
> The WAPC is a statutory authority and operates with the support of the Department of Planning, Lands and Heritage which provides professional and technical expertise, administrative services and corporate resources to assist its decision-making.[1054]

12.103 The WAPC's DA approval function is delegated to an officer within the Department of Planning, Lands and Heritage.[1055]

[1049] Government of Western Australia, 'Local planning schemes', https://www.dplh.wa.gov.au/lps, Accessed 21 February 2020.

[1050] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 3, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1051] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 14, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1052] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 25, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1053] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 24, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1054] Government of Western Australia, 'The WAPC', https://www.dplh.wa.gov.au/wapc, Accessed 21 February 2020.

[1055] Government of Western Australia, 'The WAPC', https://www.dplh.wa.gov.au/wapc, Accessed 21 February 2020.

12.104 If deemed necessary, the local government or the WAPC, will refer DAs to a Development Assessment Panel (DAP) for determination.

12.105 DAPs 'are panels of five members, comprising a mix of technical experts and local government representatives. DAPs have the power to determine applications for development which meet certain monetary thresholds, in place of the otherwise relevant decision-making authority'. DAPs 'exist to provide additional transparency consistency and reliability in decision-making on complex and significant development applications'.[1056]

12.106 The membership of a DAP is made up of three specialist members and two local government councillors (nominated by the local government). Specialist members must have experience in one of the following fields and are appointed by the Minister for Planning:

- planning,
- architecture,
- urban design,
- engineering,
- landscape design,
- environment,
- law, or
- property development and management. [1057]

12.107 DAPs can be either a Local DAP, servicing only one council area, or a Joint DAP, servicing two or more local governments. Currently there is only one LDAP, the City of Perth. There are four JDAPs:

- Metro Inner-North;
- Metro Inner-South;
- Metro Outer; and
- Regional.[1058]

12.108 For DAs with a monetary value of $20 million or more in the City of Perth, and of $10 million or more in the rest of the state, a DAP must be established to act as the determining authority. For projects between $2 and $20 million in the City of Perth, and between $2 and $10 million

[1056] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 5, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1057] Government of Western Australia, 'DAP members', https://www.dplh.wa.gov.au/about/development-assessment-panels/dap-members, Accessed 21 February 2020; Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 5, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1058] Government of Western Australia, 'About DAPs , https://www.dplh.wa.gov.au/about/development-assessment-panels/about-daps, Accessed 21 February 2020; Government of Western Australia, 'Development Assessment Panels', https://www.dplh.wa.gov.au/about/development-assessment-panels/daps-boundaries , Accessed 21 February 2020.

for the rest of the state, applicants can choose to have their DA assessed by a DAP, or the local government or the WAPC, may delegate a DAP to act as the determining authority.[1059]

12.109 For DAs relating to certain parts of the Perth metropolitan area, the determining authority will be the Metropolitan Redevelopment Authority (MRA). The MRA is a state statutory authority which prepares redevelopment schemes for each project area and determines any DAs lodged in relation to that scheme. Additionally, 'land redevelopment committees are established for each redevelopment area to enable community and local government involvement in the development and delivery of urban renewal projects'.[1060]

12.110 On making a decision on a DA, 'all relevant legislation, policy, spatial plans and statutory planning instruments must be borne in mind' by the local government, the WAPC, the DAP, or the MRA. That is, 'all aspects of the planning system…are ultimately relevant at the point of a planning authority deciding on whether a development application can be adopted'.[1061]

12.111 DAs can be determined in three ways: approved; approved subject to conditions; or, refused.

12.112 Appeal rights against DA decisions can be made by to the State Administrative Tribunal (SAT) by 'the person who applied for the relevant planning decision in the following circumstances:

- Where an application was refused;
- Where an application was approved subject to conditions which are not satisfactory to the applicant; or
- Where the decision-maker has failed to make a decision within the prescribed time period, and the relevant scheme states that such a failure amounts to a deemed refusal'.[1062]

12.113 An appeal against a DA decision must be made to SAT within 28 days of the decision being made. SAT may uphold an appeal and issue a new determination on a DA, with or without conditions, or may dismiss the appeal. The determination of the SAT is final, except in cases that may be appealed to the Supreme Court on a matter of law.[1063]

[1059] Government of Western Australia, 'Current DAP applications and information', https://www.dplh.wa.gov.au/about/development-assessment-panels/current-dap-applications-and-information, Accessed 21 February 2020.

[1060] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 5, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1061] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 27, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1062] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 25, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1063] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 28, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

The Western Australian planning system does not allow for the appeal of DA decisions by third parties. However, Ministers 'may call in an application for review, within 14 days of an application being made to SAT, if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Minister'.[1064]

12.114 The Western Australian planning system is currently undergoing a review which aims to 'identify ways to make the system more efficient as well as making it more open and understandable to everyone'.[1065]

SOUTH AUSTRALIA

12.115 The framework currently guiding the planning and development application system in South Australia consists of four main components:

- The Development Act 1993 (Development Act) and the Development Regulations 2008;
- The Planning Strategy for South Australia;
- Development Plans for each council area; and
- Building Rules.[1066]

12.116 This system will be replaced with a new framework which is set to be fully up and running by July 2020, when the *Development Act 1993* will be replaced by the new *Planning, Development and Infrastructure Act 2016*. The new system is being implemented in three phases. Phase one, 'The Outback', was completed in July 2019. Phase Two, 'Rural Areas' will be completed in April 2020, and Phase Three, 'Urban Areas' will be completed by July 2020. Phases Two and Three went to public consultation on 1 October 2019. [1067]The new framework will consist of:

- The Planning, Development and Infrastructure Act 2016 (PDI Act) and Regulations;
- State Planning Policies;
- Regional Plans; and
- Planning and Design Code.[1068]

[1064] Government of Western Australia, 'Introduction to the Western Australian Planning System', February 2014, p. 28, https://www.dplh.wa.gov.au/getmedia/58e41b53-1db3-4ff4-a5b4-96592cc1fb35/WAPC-intro_to_planning_system , Accessed 21 February 2020.

[1065] Hon. Rita Saffioti, MLA, Minister for Transport; Planning; Lands, cited in Government of Western Australia, *Modernising Western Australia's Planning System: Green paper concepts for a strategically-led system*, Discussion Paper, May 2018, https://www.dplh.wa.gov.au/getmedia/a3e1fa4c-e480-4869-a3e8-2d8c8a1c9fa5/PRJ_Green_Paper_May2018 , 21 February 2020.

[1066] Government of South Australia, *Administration of the* Development Act 1993, Annual Report 2016-17, p. 3, https://www.sa.gov.au/__data/assets/pdf_file/0011/411311/Annual-Report-on-the-Administration-of-the-Development-Act-1993-2016-17.pdf , Accessed 31 January 2020.

[1067] Government of South Australia, 'SA Planning Portal, Implementation', https://www.saplanningportal.sa.gov.au/planning_reforms/implementation, Accessed 3 February 2020.

[1068] Government of South Australia, *Administration of the* Development Act 1993, Annual Report 2016-17, p. 3, https://www.sa.gov.au/__data/assets/pdf_file/0011/411311/Annual-Report-on-the-Administration-of-the-Development-Act-1993-2016-17.pdf , Accessed 31 January 2020.

12.117 Key reforms introduced with the new system 'will include the establishment of the new State Planning Commission, a Community Engagement Charter, new statutory State Planning Policies, Regional Plans and a single Planning and Design Code, new assessment pathways and a professional accreditation system'.[1069]

12.118 Central to the new planning system is the State Planning Commission (The Commission). The Commission was established on 1 April 2017 as 'the state's independent, principal planning body that provides advice and makes recommendations on the administration of the *Planning, Development and Infrastructure Act 2016*'. The Commission 'guides decision-making of state government, local government and community and business organisations with respect to planning, development and infrastructure provisions in South Australia'.[1070]

12.119 The Commission consists of six members appointed by the State Governor on the advice of the Minister for Planning. The membership has 'widespread expertise in urban design, construction, economics and public policy' and includes one *ex officio* representative from the Department of Planning, Transport and Infrastructure.[1071]

12.120 The Commission plays a number of roles in South Australia's planning system, including:

- Delivery of the new planning system and management of its instruments leading the development of planning policies that are informed by genuine engagement with the community;
- Ensuring that future development is coordinated with the provision of public transport, roads, services and open spaces;
- Guiding councils and professionals in the delivery of the new planning system;
- Providing advice and recommendations on government planning policy;
- Analysing and assessing development projects;
- Coordinating planning with infrastructure guidance; and
- Guiding local council and accredited professionals in the delivery of new planning services and community engagement.[1072]

12.121 The DA determination function of the State Planning Commission is undertaken by its State Commission Assessment Panel (SCAP). SCAP is made up of seven members appointed by the State Planning Commission. The members are chosen from various fields, with the Presiding Member and Deputy Presiding Member having 'qualifications and experience in urban and

[1069] Government of South Australia, *Administration of the* Development Act 1993, Annual Report 2016-17, p. 3, https://www.sa.gov.au/__data/assets/pdf_file/0011/411311/Annual-Report-on-the-Administration-of-the-Development-Act-1993-2016-17.pdf , Accessed 31 January 2020.

[1070] Government of South Australia, 'About the Commission', https://www.saplanningcommission.sa.gov.au/about_the_commission , Assessed 31 January 2020.

[1071] Government of South Australia, 'About the Commission', https://www.saplanningcommission.sa.gov.au/about_the_commission , Accessed 31 January 2020.

[1072] Government of South Australia, 'About the Commission', https://www.saplanningcommission.sa.gov.au/about_the_commission , Accessed 31 January 2020.

regional planning, environment management, or a related discipline'. Members are bound by a Code of Conduct.[1073]

12.122 SCAP performs a range of roles within the planning system, including:

- Assessing and determining certain development applications;
- Acting as the concurring authority for non-complying DAs approved by a council of a regional assessment panel;
- Assessing and reporting on crown development and public infrastructure applications to the Minister of Planning; and
- Assisting in the initial assessment stages of a major development proposal.[1074]

12.123 The current DA system in South Australia has three categories of development: complying, non-complying, and development on consideration of merit.[1075]

12.124 Complying developments are those that comply with the relevant sections of the Regulations or the lists of complying developments compiled by local councils in their Development Plan.

12.125 Non-complying developments are those that do not comply with a particular zone or policy area. 'Accordingly non-complying development is not usually approved without some form of unique or special circumstances'.

12.126 Developments for consideration on merit are 'any nature of development that is not listed as either a complying development or a non-complying development in a development plan or Schedule 4 of the Regulations'.[1076]

12.127 Under the new planning system, the pathways for DAs will change. The new system will 'be more efficient, with fewer assessments and people involved—the system will assess according to need'. The new system will include three pathways: Accepted, Code Assessed, and Impact Assessed. The majority of DAs are straightforward and will be categorised as Accepted or Code Assessed.[1077]

[1073] Government of South Australia, 'SCAP Members', https://www.saplanningcommission.sa.gov.au/scap/scap_members , Accessed 31 January 2020.

[1074] Government of South Australia, 'Welcome to the State Commission Assessment Panel (SCAP)', https://www.saplanningcommission.sa.gov.au/scap , Accessed 31 January 2020.

[1075] Government of South Australia, *Guide to Development Assessment: An integrated planning and development system for South Australia,* p. 13, https://www.sa.gov.au/__data/assets/pdf_file/0003/17049/Guide_to_development_assessment.pdf , Accessed 31 January 2020.

[1076] Government of South Australia, *Guide to Development Assessment: An integrated planning and development system for South Australia,* p. 14, https://www.sa.gov.au/__data/assets/pdf_file/0003/17049/Guide_to_development_assessment.pdf , Accessed 31 January 2020.

[1077] Government of South Australia, 'Our New Assessment System', August 2018, pp. 3-4, https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0006/492045/Our_New_Assessment_System.pdf , Accessed 31 January 2020.

12.128 Additionally, the new system will allow for Exempt developments, which will not require approval. Examples of such Exempt developments include 'small garden sheds, water tanks or fences'.[1078]

12.129 Accepted developments will 'not need planning consent, but may require building consent'. 'Accepted development covers standard or expected developments for its location, because it does not have impact beyond the site'. Examples of Accepted developments include verandas or carports. Accepted developments do not require public notification.[1079]

12.130 Code Assessed DAs will fall into two categories: Deemed-to-satisfy and Performance Assessed:

- Deemed-to-satisfy DAs are those that are 'deemed to satisfy' 'when it meets the prescriptive requirements of the Code'. A Deemed-to-satisfy DA 'meets established criteria, is measurable and is an appropriate land use is its zone'. These types of DA do not require public notification and applications are not open to appeals by third parties.
- Performance Assessed DAs are those 'which require more intensive assessment of their potential impacts, design, and how they fit within their neighbourhood'. Examples include residential apartments 'or any development where design and impact need to be considered separate from numerical criteria'. These types of DAs require public notification, 'except in cases where an exemption is specifically applied'. Any person can make a submission to the assessment authority on these developments, but third parties do not have appeal rights once an approval has been granted.[1080]

12.131 Impact Assessed developments are those of a certain scale that 'need to be considered at the highest level, either by the State Planning Commission or directly by the Minister for Planning'. These types of development also fall into two categories: Restricted and Not Restricted:

- Impact Assessed—Restricted DAs are those that are 'restricted' by the Code, such as a shop in a residential area. For these types of development, 'there may be merit in the development, but it was not originally envisaged when the planning policies were set'. All developments in this category are determined by the State Planning Commission via SCAP. All such DAs will undergo public notification, and members of the public will be allowed to make submissions on the DA. Any person making a submission during the notification period will be eligible for a third party right of appeal on SCAP's decision concerning the DA.

[1078] Government of South Australia, 'Our New Assessment System', August 2018, p. 8, https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0006/492045/Our_New_Assessment_System.pdf , Accessed 31 January 2020.

[1079] Government of South Australia, 'Our New Assessment System', August 2018, p. 8, https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0006/492045/Our_New_Assessment_System.pdf , Accessed 31 January 2020.

[1080] Government of South Australia, 'Our New Assessment System', August 2018, p. 9, https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0006/492045/Our_New_Assessment_System.pdf , Accessed 31 January 2020.

- Impact Assessed—Not Restricted is the highest and 'most rigorous assessment category which can be classified either by Ministerial declaration, or by regulation' and relates to major developments 'which may have impacts that are significant to the State'. 'This tier of development requires whole-of-government assessment and an Environmental Impact Statement which considers environmental, social and economic effects'. For these types of DAs, the Minister for Planning acts as the assessing authority. In accordance with the Community Engagement Charter, DAs in this category allow for 'avenues for community consultation' for the consideration of the Minister in making a decision. Ministerial decisions on this category of DA, however, do not allow for third party appeals.[1081]

12.132 The new PDI Act 'provides for a range of Assessment Panels to make decisions on more complex developments and those matters which may be prescribed by regulations'. The PDI Act proposes the following Assessment Panels:

- Council Assessment Panels—appointed by a council;
- Joint Planning Board Assessment Panels—appointed by a Joint Planning Board;
- Combined Assessment Panels—appointed by the Minister to be involved in applications across different legislation;
- Regional Assessment Panels—appointed by the Minister and comprising parts or all of the areas of two or more councils; and,
- Local Assessment Panels—appointed by the Minister upon recommendation of the State Planning Commission following an inquiry into an existing Council Assessment Panel.[1082]

12.133 Under the new planning system there are five basic types of relevant authority that can be involved in determining DAs:

- The Minister;
- The State Planning Commission (via SCAP);
- Assessment panels;
- Assessment managers; and
- Accredited professionals.

12.134 Additionally, 'councils continue as relevant authorities for certain building-related matters, but otherwise a council-appointed assessment panel and assessment manager will be the

[1081] Government of South Australia, 'Our New Assessment System', August 2018, pp. 10-11, https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0006/492045/Our_New_Assessment_System.pdf , Accessed 31 January 2020..

[1082] Government of South Australia, 'Assessment Panels—What do Councils need to know?', https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0005/301487/Factsheet_-_Assessment_Panels.pdf , Accessed 31 January 2020.

relevant authority in their own right, rather than as a delegate, and may not be directed by the council in undertaking their statutory functions'.[1083]

12.135 Accredited professionals currently have determining powers over certain types of complying development planning consent and under the new system will determine Deemed-to-satisfy DAs.

12.136 Assessment mangers will be appointed by council Chief Executive Officers, or joint planning boards, and have determining power in relation to Deemed-to-satisfy DAs and a range of other minor development proposals. Assessment mangers must be accredited professionals and every assessment panel must have an assessment manager. The assessment panel may review the decisions of assessment managers, if an applicant so requests.

12.137 Determination by assessment panels will be for more complex DAs, such as Performance Assessed DAs. Most assessment panels will be appointed by councils as Council Assessment Panels.

12.138 SCAP will be the relevant authority in relation to Impact Assessed—Restricted DAs, and the Minister for Impact Assessed—Not Restricted DAs.[1084]

12.139 Under the PDI Act, the Minister may call in DAs, if, in the Minister's opinion, the DA:

- Is of a major social, economic or environmental importance to the state;
- Involves benefits, impacts or risks that are of significance to the state;
- Has a cumulative effect that give rise to issues of significance to the state; would have a significant impact on a matter arising under another law; or
- Has impact beyond one planning region of one council.[1085]

12.140 DAs which have been called in by the Minister may be determined SCAP.[1086]

12.141 Appeals against DA decisions can be brought before the Environment, Resources and Development Court. The Court hears, *inter alia*:

- Appeals against the decisions of a relevant authority on DAs;

[1083] Government of South Australia, 'A user's guide to the *Planning, Development and Infrastructure Act 2016*', pp. 12-13, https://dpti.sa.gov.au/__data/assets/pdf_file/0009/259497/A_Users_Guide_to_the_PDI_Act_2016.pdf , Accessed 31 January 2020.

[1084] Government of South Australia, 'A user's guide to the *Planning, Development and Infrastructure Act 2016*', p. 13, https://dpti.sa.gov.au/__data/assets/pdf_file/0009/259497/A_Users_Guide_to_the_PDI_Act_2016.pdf , Accessed 31 January 2020.

[1085] Government of South Australia, 'A user's guide to the *Planning, Development and Infrastructure Act 2016*', pp. 15-16, https://dpti.sa.gov.au/__data/assets/pdf_file/0009/259497/A_Users_Guide_to_the_PDI_Act_2016.pdf , Accessed 31 January 2020.

[1086] Government of South Australia, 'A user's guide to the *Planning, Development and Infrastructure Act 2016*', p. 13, https://dpti.sa.gov.au/__data/assets/pdf_file/0009/259497/A_Users_Guide_to_the_PDI_Act_2016.pdf , Accessed 31 January 2020.

- Enforcement proceedings initiated by either a relevant authority or private individuals and bodies; and
- Proceedings brought under other legislation such as the Environment Protection Act and the Heritage Act.[1087]

12.142 In relation DA decisions, the Court will hear appeals from:

- A person (who has applied for a development approval) appealing against a refusal to grant and approval or the conditions attached to the approval; or
- A third party who has the right to appeal under the relevant laws.[1088]

TASMANIA

12.143 The key legislative instrument of the planning system in Tasmania is the *Land Use Planning and Approvals Act 1993*. This Act sets 'out the planning process, including the roles and functions of the Minister for Planning and Local Government, the Commission and Councils'. It also 'sets out the various requirements and timeframes that apply to the planning process in Tasmania'.[1089]

12.144 In late 2015, the Tasmanian government introduced the Tasmanian Planning Scheme 'to deliver greater consistency in the planning rules across the State'.[1090] The Scheme 'is a single state-wide planning scheme which will replace the current 30 planning schemes operating in Tasmania'.[1091]

12.145 The Tasmanian Planning Scheme consists of two main elements:

- State Planning Provisions (SPPs)—a set of state-wide consistent planning rules; and,
- Local Provisions Schedules (LPSs)—containing the zone and overlay maps and lists that apply the SPPs and identify special and unique areas for each council area.[1092]

[1087] Government of South Australia, *Guide to Development Assessment: An integrated planning and development system for South Australia,* p. 91, https://www.sa.gov.au/__data/assets/pdf_file/0003/17049/Guide_to_development_assessment.pdf , Accessed 31 January 2020.

[1088] Government of South Australia, *Guide to Development Assessment: An integrated planning and development system for South Australia,* p. 92, https://www.sa.gov.au/__data/assets/pdf_file/0003/17049/Guide_to_development_assessment.pdf , Accessed 31 January 2020.

[1089] Tasmanian Planning Commission, 'Tasmanian planning system', https://www.planning.tas.gov.au/tasmanian_planning_system , Accessed 10 March 2020.

[1090] Tasmanian Government, 'Tasmanian Planning Reform—An Overview', https://planningreform.tas.gov.au/__data/assets/pdf_file/0003/390855/Fact-Sheet-1-Tasmanian-Planning-Reform-An-Overview-December-2017.pdf , Accessed 10 March 2020.

[1091] Tasmanian Government, 'Tasmanian Planning Scheme—An Overview', https://planningreform.tas.gov.au/__data/assets/pdf_file/0004/390856/Fact-Sheet-2-Tasmanian-Planning-Scheme-An-Overview-September-2017.pdf , Accessed 10 March 2020..

[1092] Tasmanian Government, 'Tasmanian Planning Scheme—An Overview', https://planningreform.tas.gov.au/__data/assets/pdf_file/0004/390856/Fact-Sheet-2-Tasmanian-Planning-Scheme-An-Overview-September-2017.pdf , Accessed 10 March 2020..

12.146 The SPPs, which came into effect on 2 March 2017, include, *inter alia*:

- 23 generic zones which indicate what land use and development is appropriate for each zone, such as residential, business, agriculture, utilities, environmental, and recreational.
- A suite of 16 codes which provide clear pathways for dealing with land use issues which occur across Tasmania and may apply across a range of zones, covering matters such as natural hazards, local heritage values, natural assets, parking requirements, and the protection of road, railway and electricity infrastructure.[1093]

12.147 The SPPs were prepared by the Minister Planning and Local Government following public consultation, public hearings, and advice from the Tasmanian Planning Commission.

12.148 The LPSs provide for how the SPP apply in each local municipality. As well as containing zone maps and overlay maps, the LPSs 'contain local area objectives and any planning controls for unique places specific to the local area'. Local councils are responsible for preparing LPSs for their area and must consult with the community and stakeholders to ensure it reflects the community's expectations. All LPSs must be submitted to the Tasmania Planning Commission 'for consideration prior to the public exhibition and assessment process'.[1094]

12.149 In devising their LPS, local councils 'will choose from the suite of planning rules to express their community's land use expectations'.[1095]

12.150 In Tasmania, local councils assess the majority of DAs. As a typical example, Huon Valley Council describes five types of developments:

- Exempt;
- No Planning Permit Required (NPR);
- Permitted (no public notification);
- Discretionary (public notification required); and
- Prohibited (Council must refuse the application).[1096]

12.151 Exempt developments are set out in the Planning Scheme and do not require planning approval. Such developments may require building and plumbing approvals, however.

[1093] Tasmanian Government, 'Tasmanian Planning Scheme—An Overview', https://planningreform.tas.gov.au/__data/assets/pdf_file/0004/390856/Fact-Sheet-2-Tasmanian-Planning-Scheme-An-Overview-September-2017.pdf , Accessed 10 March 2020.

[1094] Tasmanian Government, 'Tasmanian Planning Scheme—An Overview', https://planningreform.tas.gov.au/__data/assets/pdf_file/0004/390856/Fact-Sheet-2-Tasmanian-Planning-Scheme-An-Overview-September-2017.pdf, Accessed 10 March 2020.; Tasmanian Government, 'Local Provisions Schedule', https://planningreform.tas.gov.au/facts/local-provisions-schedules2 , Accessed 10 March 2020..

[1095] Tasmanian Government, 'Tasmanian Planning Scheme—An Overview', https://planningreform.tas.gov.au/__data/assets/pdf_file/0004/390856/Fact-Sheet-2-Tasmanian-Planning-Scheme-An-Overview-September-2017.pdf , Accessed 10 March 2020.

[1096] Huon Valley Council, 'Planning Applications: general information for lodging a planning application', https://www.huonvalley.tas.gov.au/wp-content/uploads/2015/08/1-Info-Sheet-Planning-Application-General-Information-2014-TO-BE-UPDATED.pdf , Accessed 10 March 2020.

12.152 An NPR development is one that 'complies with the relevant provisions of the Planning Scheme (including development standards and schedules) and therefore does not require a Planning Permit'. Examples of this type of development are 'dwellings in the residential zones and agricultural activities in rural areas'.[1097]

12.153 Permitted developments require a DA to be submitted to the council for a Planning Permit and 'ultimately council must approve the application providing that all the relevant provisions of the Planning Scheme are complied with. A permitted proposal means that council must grant approval but may impose relevant conditions on the permit'.[1098]

12.154 A Discretionary development requires the submission of a DA for council determination. 'The application can either be approved with or without conditions or alternatively refused by council'. This type of development must go through a 14-day public notifications period during which period a person can make a submission to the council supporting or opposing the DA. 'A Discretionary proposal may be approved or refused based on the merits of the application and any decision may be appealed'.[1099]

12.155 Prohibited developments are those not allowed within the respective zone in a Planning Scheme and must be refused by council.[1100]

12.156 Councils must make a decision on a Permitted development within 28 days and for a Discretionary development within 42 days.[1101]

12.157 For Discretionary DAs, an appeal against the decision of a council can be made to the Resource Management and Planning Appeal Tribunal, which is responsible for appeals under the *Land Use Planning and Approvals Act 1993*.[1102] Applicants and any person who has made a submission on a DA is entitled to appeal the decision of a council.[1103]

[1097] Huon Valley Council, 'Planning Applications: general information for lodging a planning application', https://www.huonvalley.tas.gov.au/wp-content/uploads/2015/08/1-Info-Sheet-Planning-Application-General-Information-2014-TO-BE-UPDATED.pdf , Accessed 10 March 2020.

[1098] Huon Valley Council, 'Planning Applications: general information for lodging a planning application', https://www.huonvalley.tas.gov.au/wp-content/uploads/2015/08/1-Info-Sheet-Planning-Application-General-Information-2014-TO-BE-UPDATED.pdf , Accessed 10 March 2020.

[1099] Huon Valley Council, 'Planning Applications: general information for lodging a planning application', https://www.huonvalley.tas.gov.au/wp-content/uploads/2015/08/1-Info-Sheet-Planning-Application-General-Information-2014-TO-BE-UPDATED.pdf , Accessed 10 March 2020.

[1100] Huon Valley Council, 'Planning Applications: general information for lodging a planning application', https://www.huonvalley.tas.gov.au/wp-content/uploads/2015/08/1-Info-Sheet-Planning-Application-General-Information-2014-TO-BE-UPDATED.pdf , Accessed 10 March 2020.

[1101] Huon Valley Council, 'Planning Applications: general information for lodging a planning application', https://www.huonvalley.tas.gov.au/wp-content/uploads/2015/08/1-Info-Sheet-Planning-Application-General-Information-2014-TO-BE-UPDATED.pdf, Accessed 10 March 2020.; City of Hobart, 'Timeframes for processing applications', https://www.hobartcity.com.au/Development/Planning/Guidelines-and-help/Timeframes-for-processing-applications , Accessed 10 March 2020..

[1102] Resource Management and Planning Appeal Tribunal, 'Legislation', https://www.rmpat.tas.gov.au/legislation, Accessed 10 March 2020.

[1103] Huon Valley Council, 'Planning Applications: general information for lodging a planning application', https://www.huonvalley.tas.gov.au/wp-content/uploads/2015/08/1-Info-Sheet-Planning-Application-General-Information-2014-TO-BE-UPDATED.pdf , Accessed 10 March 2020.; City of Hobart, 'Timeframes for processing applications', https://www.hobartcity.com.au/Development/Planning/Guidelines-and-help/Timeframes-for-processing-applications , Accessed 10 March 2020.; Devonport City Council, 'Planning Fact Sheet and FAQs',

12.158 In addition, the Tasmania Planning Commission 'can assess major development projects, including those that might cover more than one council area'.[1104]

12.159 The Tasmanian Planning Commission is an independent statutory body which performs a range of roles, including:

- assessing interim planning schemes;
- providing planning advice to the Minister for Planning and Local Government;
- assessing major development projects;
- reporting on draft State Policies;
- assessing planning schemes;
- assessing planning directives;
- inquiring into the future use of public land; and
- reviewing reports and representations on draft management plans.[1105]

12.160 The major development projects the Tasmanian Planning Commission may assess are projects of state significance and projects of regional significance.

12.161 Projects of state significance are those that potentially have state-wide effects. The assessment process of such a development is set out in the *State Policies and Projects Act 1993*. According to the Tasmanian Planning Commission:

> If the Minister considers that a project is of State significance, he or she may recommend that the Governor declares the proposal to be a 'project of State significance'. This must then be approved by Parliament before an assessment can begin. If approved, the Minister then directs the Commission to undertake an integrated assessment of the proposal.[1106]

12.162 For the assessment process, the developer must prepare and submit to the Tasmanian Planning Commission a draft Integrated Impact Statement, which 'describes the proposal and addresses the project's potential environmental, social, community and economic impacts'. This draft Integrated Impact Statement must be made against guidelines for the assessment developed by the Tasmanian Planning Commission, which may invite public comments on the guidelines.[1107]

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http://www.devonport.tas.gov.au/Planning-Development/Planning/Planning-Fact-Sheets-FAQs , Accessed 10 March 2020.

[1104] Tasmanian Planning Commission, 'Assessment and review processes', https://www.planning.tas.gov.au/assessments/processes , Accessed 10 March 2020..

[1105] Tasmanian Planning Commission, 'Roles of the Tasmanian Planning Commission', https://www.planning.tas.gov.au/the_commission/role , Accessed 10 March 2020.

[1106] Tasmanian Planning Commission, 'Assessment and review processes', https://www.planning.tas.gov.au/assessments/processes , Accessed 10 March 2020.

[1107] Tasmanian Planning Commission, 'Assessment and review processes', https://www.planning.tas.gov.au/assessments/processes , Accessed 10 March 2020.

12.163 Following this, 'the Commission then prepares a Draft Integrated Assessment Report. This is also made publicly available, and comments are invited. The Commission considers the comments received before deciding whether to hold a further hearing'. The Commission's final report is submitted to the Minister providing the Commission's recommendations and conditions for the project. The Tasmanian Government 'finally decides whether the project goes ahead, and on what conditions'.[1108]

12.164 Projects of regional significance can be declared by the Minister under the *Land Use Planning and Approvals Act 1993*. In assessing such projects, the Tasmanian Planning Commission 'must appoint a Development Assessment Panel. The Panel is made up of:

- A Commissioner, or nominee, as the chairperson;
- A person with appropriate qualifications and experience nominated by relevant councils; and
- A person the Commission considers has qualifications or experience relevant to the project.'[1109]

12.165 The Panel develops assessment guidelines in response to which the applicant is required to submit a project impact statement. This project impact statement is then made public and the Panel receives comments and holds hearings. 'The Panel determines whether to grant a special permit, as well as any conditions or restrictions on that permit'.[1110]

NORTHERN TERRITORY

12.166 The main legislative planning instruments in the Northern Territory are the *Planning Act* 1999 (the Act) and the Planning Regulations 2000 (the Regulations). The Act:

- Establishes the Northern Territory Planning Scheme and provides for a DA process;
- Provides for interim development control;
- Provides for an appeals regime and enforcement; and
- Establishes the Development Consent Authority.

12.167 The Regulations 'deal with matters of a procedural or administrative nature and include exempt subdivisions, notices of decisions and requirements for advertising development applications. It also prescribes circumstances where a right of third party appeal exists'.[1111]

[1108] Tasmanian Planning Commission, 'Assessment and review processes', https://www.planning.tas.gov.au/assessments/processes , Accessed 10 March 2020.

[1109] Tasmanian Planning Commission, 'Assessment and review processes', https://www.planning.tas.gov.au/assessments/processes , Accessed 10 March 2020.

[1110] Tasmanian Planning Commission, 'Assessment and review processes', https://www.planning.tas.gov.au/assessments/processes , Accessed 10 March 2020.

[1111] Northern Territory Government, 'Northern Territory Legislation,' https://legislation.nt.gov.au/en/Legislation/PLANNING-ACT-1999; https://legislation.nt.gov.au/en/Legislation/PLANNING-REGULATIONS-2000Accessed 26 April 2020.

12.168 The Northern Territory Planning (NTPC) Scheme covers the entire Northern Territory, except areas excluded or covered by another planning scheme, and provides the framework for how land can be used and developed. It includes:

- Statements about land use/development policy;
- Development controls that allow, prohibit or put conditions on a use or development of land;
- Instructions, guidelines and assessment criteria to help the consent authority to assess and decide on development applications; and
- Maps, plans, designs and diagrams.[1112]

12.169 The NTPC outlines four types of developments. Depending on the relevant zoning requirements, a development may be:

- Permitted;
- Self Assessable;
- Discretionary; or
- Prohibited.[1113]

12.170 A Permitted development is one that:[1114]

a) Is shown on the relevant zoning table as permitted; and

b) Complies with all the provisions of the Northern Territory Planning Scheme.

12.171 A Self Assessable development is one that:[1115]

a) Is shown in the relevant zoning table as self assessable;

b) Complies with all the provisions of the Northern Territory Planning Scheme; and

c) The approved form is completed and lodged with the Department of Infrastructure, Planning and Logistics.

[1112] Northern Territory Government, 'Northern Territory Planning Scheme', https://nt.gov.au/property/building-and-development/nt-planning-scheme/northern-territory-planning-scheme , Accessed 10 March 2020.

[1113] Northern Territory Government, *Northern Territory Planning Scheme*, clause 2.2, https://nt.gov.au/__data/assets/pdf_file/0010/381799/northern-territory-planning-scheme.pdf , Accessed 10 March 2020.

[1114] Northern Territory Government, *Northern Territory Planning Scheme*, clause 2.2, https://nt.gov.au/__data/assets/pdf_file/0010/381799/northern-territory-planning-scheme.pdf , Accessed 10 March 2020.

[1115] Northern Territory Government, *Northern Territory Planning Scheme*, clause 2.2, https://nt.gov.au/__data/assets/pdf_file/0010/381799/northern-territory-planning-scheme.pdf , Accessed 10 March 2020.

12.172 Development consent is required for the following circumstances:[1116]

a) It is shown in the relevant zoning table as discretionary;

b) Subject to conditions, it is not shown in the relevant zoning table;

c) It does not comply with all the provision of the Northern Territory Planning Scheme;

d) A provision of the Northern Territory Planning Scheme requires consent.

12.173 The majority of DAs are determined by the Development Consent Authority, a statutory authority with the independent power to determine DAs within its area of operation.[1117] 'Each division of the Development Consent Authority determines development applications within their area'. The Development Consent Authority is divided into seven areas: [1118]

- Alice Springs;
- Batchelor;
- Darwin;
- Kathrine;
- Litchfield;
- Palmerston; and
- Tennant Creek.

12.174 For DAs outside of the Development Consent Authority's areas of operation, or for significant developments, the consent authority is the Minister for Infrastructure, Planning and Logistics.

12.175 A significant development is one that a) requires a development permit; and, b) may be significant to the future land use and development in the Territory.[1119]

12.176 The Northern Territory Planning Commission may be required to provide a significant development report to the Minister for Infrastructure, Planning and Logistics on such DAs. The Commission is an independent statutory authority which, *inter alia*, 'sets the strategic framework for integrated land use, transport and infrastructure planning'.[1120]

12.177 In preparation of its report for the Minister, the Commission will hold public hearings and receive public submissions on behalf of the Minister. The Planning Commission will invite

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[1116] Northern Territory Government, *Northern Territory Planning Scheme*, https://nt.gov.au/__data/assets/pdf_file/0010/381799/northern-territory-planning-scheme.pdf , Accessed 10 March 2020.

[1117] *Planning Act* 1999 (Northern Territory), part 8.

[1118] Northern Territory Government, 'Development Consent Authority', https://dipl.nt.gov.au/lands-and-planning/boards-committees-and-authorities/development-consent-authority/introduction-and-contact-details , Accessed 10 March 2020.

[1119] *Planning Act* 1999 (Northern Territory), section 50A.

[1120] The Northern Territory Planning Commission, 'The Northern Territory Planning Commission', https://planningcommission.nt.gov.au/home, Accessed 10 March 2020.

Northern Territory services authorities, local government, and people who have made submission on the DA to participate in such public hearings.[1121]

12.178 Following the public hearing, the Planning Commission 'gives a report to the Minister about all the relevant issues raised at the hearing and in the submissions, and any other matters that the Planning Commission thinks should be taken into account when the Minister makes a decision about the application'.[1122] The Minister is obliged to 'take the report into account before determining the application'.[1123]

12.179 In making a determination on a DA the Development Consent Authority or the Minister must determine to:

a) Consent, either conditionally or unconditionally, to the proposed development;

b) Alter the proposed development in the manner it thinks fit and consent, either conditionally or unconditionally, to the proposed development as altered; or

c) Refuse to consent to the proposed development.[1124]

12.180 Most DAs are required to undergo a 14-day public notification process, during which time members of the public can make submissions in support or in opposition to the proposed development.[1125]

12.181 The DA consent authority may invite submitters to give evidence before it in relation to the relevant DA. If a local authority makes a submission on a DA, the consent authority must invite a representative of that local authority to appear to provide evidence.[1126]

12.182 For DAs prohibited under the Northern Territory Planning Scheme, or another planning scheme, 'an exceptional development permit may be granted by the Minister for Infrastructure, Planning and Logistics'.[1127] Once submitted, such applications follow the same process as an application for a planning scheme amendment.

[1121] The Northern Territory Planning Commission, 'Hearings', https://planningcommission.nt.gov.au/hearings , Accessed 10 March 2020.

[1122] The Northern Territory Planning Commission, 'Hearings', https://planningcommission.nt.gov.au/hearings , Accessed 10 March 2020.

[1123] *Planning Act* 1999 (Northern Territory), section 50D.

[1124] *Planning Act* 1999 (Northern Territory), section 53.

[1125] *Planning Act* 1999 (Northern Territory), section 47.

[1126] *Planning Act* 1999 (Northern Territory), section 50.

[1127] Northern Territory Government, 'Development One Stop Shop: applications and processes', https://nt.gov.au/property/building-and-development/submit-a-development-application/development-one-stop-shop-applications-and-processes/exceptional-development-permits , Accessed 10 March 2020.

12.183 Applicants can appeal against a refusal by a consent authority to grant consent for a DA to the Northern Territory Civil and Administrative Tribunal. Such appeals must be made within 28 days of DA refusal.[1128]

12.184 Appeals by 'a person or local authority who made a submission' in relation to a DA can also be made to the Tribunal against the consent granted to, or conditions imposed on, the relevant DA.[1129]

12.185 The Tribunal cannot hear appeals against most DA determinations made by the Minister for Infrastructure, Planning and Logistics, as the consent authority.[1130]

12.186 DAs may be drafted, lodged, and tracked online via the Northern Territory's Development Applications Online website.[1131]

[1128] *Planning Act* 1999 (Northern Territory), section 111,

[1129] *Planning Act* 1999 (Northern Territory), section 117.

[1130] *Planning Act* 1999 (Northern Territory), section 117A.

[1131] Northern Territory Government, 'Development Applications Online', https://www.ntlis.nt.gov.au/planning/ , Accessed 10 March 2020

13 CONCLUSION

13.1 The Committee has made 66 recommendations.

13.2 The Committee would like to reiterate its thanks to the Minister, officials, witnesses and submitters who contributed their time and effort to this inquiry.

Ms Caroline Le Couteur MLA

Chair

29 April 2020

APPENDIX A – WITNESSES

10 SEPTEMBER 2018

- Hughes Residents Association, Dr Jacky Fogerty
- Hughes Residents Association, Ruth Cully
- Friends of Hawker Village, Christine Gingell
- Kingston and Barton Residents Group, Peter Moore
- Griffith and Narrabundah Community Association Inc, Dr David Denham AM
- Griffith and Narrabundah Community Association Inc, Dr Leo Dobes
- Property Council of Australia, Adina Cirson
- Property Council of Australia, Arabella Rhode
- Property Council of Australia, Dean McPherson
- Master Builders Association, Michael Hopkins
- Australian Institute of Architects, Jessica De Rome
- Australian Institute of Architects, Yuri Leong
- Australian Institute of Architects, Dean McPherson
- Australian Institute of Architects, Phillip Leeson
- Planning Institute of Australia (ACT), Trevor Fitzpatrick
- Planning Institute of Australia (ACT), Andrew Connor
- Macquarie Resident, Moir Holmes
- Macquarie Resident, Sandra Davison
- Environmental Defenders Office, Stephanie Booker
- Environmental Defenders Office, Nicola Silbert
- Red Hill Regenerators, Dr Michael Mulvaney
- Red Hill Regenerators, Ross Kingsland
- Ginninderra Falls Association, Robyn Coghlan
- D Marshall
- Dr M Pearson AO

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- Woden Valley Community Council, Fiona Carrick
- Campbell Community Association, Julie Doyle
- Inner South Canberra Community Council, Marea Fatseas
- Inner South Canberra Community Council, Anne Forrest
- Combined Community Councils of the ACT, Robin Stanton
- Melinda Kouparitsas
- Steven Kouparitsas
- R Cully
- J Mitchell
- D Horne
- Mr Mick Gentleman MLA, Minister for Planning and Land Management
- Mr Ben Ponton, Director-General, EPSDD
- Mr Geoffrey Rutledge, Deputy Director-General, Land Strategy and Environment, EPSDD
- Mr Brett Phillips, Executive Director, Planning Delivery Division, EPSDD
- Mr George Cilliers, Senior Manager, Merit Assessment and Deed Management, EPSDD

APPENDIX B – SUBMISSIONS

Submission Number	Submitter	Received
001	Dickson	11/05/2018
002	Goddard	17/05/2019
003	Marshall & Pearson	17/05/2019
004	Johnstone	22/05/2019
005	Davidson	25/05/2019
006	Nash	29/05/2019
007	Confidential	01/06/2018 – 23/07/2018
008	Elsum	04/06/2018
009	Better Renting	12/07/2018
010	Red Hill Regenerators	25/07/2018
011	Friends of Hawker Village	25/07/2018
012	Confidential	25/07/2018
013	Butterfield	25/07/2018
014	Ginninderra Falls Association	25/07/2018
015	Blemings	31/07/2018
016	Walton	31/07/2018
017	Schuller	31/07/2018

Submission Number	Submitter	Received
018	Campbell Community Association	31/07/2018
019	Mackay	31/07/2018
020	Nash	01/08/2019
021	Combined Community Councils of the ACT	01/08/2019
022	Gungahlin Community Council	02/08/2019
023	National Trust of Australia ACT	02/08/2019
024	Horne	02/08/2019
025	Spira	03/08/2019
026	Lloyd	03/08/2019
027	Goffman	03/08/2019
028	Temple	03/08/2019
029	Planning Institute of Australia ACT Division	03/08/2019
030	Nelson	03/08/2019
031	Cronan	03/08/2019
032	Russell	03/08/2019
033	Matt Dudley	03/08/2019
034	Reid Residents Association	03/08/2019
035	Margaret Dudley	03/08/2019

Submission Number	Submitter	Received
036	McGrath	03/08/2019
037	Australian Institute of Architects	03/08/2019
038	AHURI	03/08/2019
039	Kingston and Barton Residents Group	03/08/2019
040	Hughes Residents Association	03/08/2019
041	Marks	03/08/2019
042	ACT Government	03/08/2019
043	Edquist	03/08/2019
044	Inner South Canberra Community Council	03/08/2019
045	Canberra Business Chamber	03/08/2019
046	Weston Creek Community Council	03/08/2019
047	Housing Institute Australia (HIA) Ltd	03/08/2019
048	Master Builders Association (ACT)	03/08/2019
049	Property Council of Australia	03/08/2019
050	Confidential	03/08/2019
051	Marker	06/08/2019
052	Moliterno	06/08/2019
053	Erett	06/08/2019

Submission Number	Submitter	Received
054	Woden Valley Community Council	06/08/2019
055	Doherty	06/08/2019
056	Confidential	06/08/2019
057	Cully	06/08/2019
058	Environmental Defenders' Office (ACT)	06/08/2019
059	Vidler	06/08/2019
060	Kelly & Appleton	16/08/2019
061	Klovdahl	23/08/2019
062	Icon Water	24/08/2019
063	Dodgson	28/08/2019
064	Griffith and Narrabundah Community Association Inc	03/09/2018
065	Bartone	03/09/2018
066	Beaumont	19/09/2018

APPENDIX C – QUESTIONS TAKEN ON NOTICE/ QUESTIONS ON NOTICE

Questions taken on Notice - 13 September 2018

No.	Hearing date	Asked by	Directorate/ Portfolio	Subject	Answer date
01	13/9/2018	Le Couteur MLA	EPSDD		4/10/2018

Questions on Notice - 13 September 2018

No.	Hearing date	Asked by	Directorate/ Portfolio	Subject	Answer date
01	13/9/2018	Le Couteur MLA	EPSDD	Complaints to Access Canberra	4/10/2018
02	13/9/2018	Le Couteur MLA	EPSDD	Exempt Development	9/10/2018
03	13/9/2018	Le Couteur MLA	EPSDD	Development Application Reconsideration	9/10/2018
04	13/9/2018	Le Couteur MLA	EPSDD	Design Review Panels	2/10/2018
05	13/9/2018	Le Couteur MLA	EPSDD	The Territory Plan	2/10/2018
06	13/9/2018	Le Couteur MLA	EPSDD	Retrospective Development Applications	4/10/2018
07	13/9/2018	Le Couteur MLA	EPSDD	Appeals and Mediation	9/10/2018

No.	Hearing date	Asked by	Directorate/ Portfolio	Subject	Answer date
08	13/9/2018	Le Couteur MLA	EPSDD	Faulty DA Plans and environmental assessments	9/10/2018
09	13/9/2018	Cheyne MLA	EPSDD	Current staffing of DA Assessment team	9/10/2018
10	13/9/2018	Cheyne MLA	EPSDD	Accountability of Private Building Certifiers	4/10/2018
11	13/9/2018	Cheyne MLA	EPSDD	Availability of DA evaluations	4/10/2018
12	13/9/2018	Cheyne MLA	EPSDD	Community Engagement	2/10/2018
13	13/9/2018	Cheyne MLA	EPSDD	Percentage of Plantable Area Rules	2/10/2018
14	13/9/2018	Cheyne MLA	EPSDD	Process for making comments on a development application	2/10/2018
15	13/9/2018	Cheyne MLA	EPSDD	Site Visits	2/10/2018
16	13/9/2018	Cheyne MLA	EPSDD	Holistic impact of a development on a precinct or suburb	2/10/2018
17	13/9/2018	Cheyne MLA	EPSDD	Complains related to DAs	4/10/2018
18	13/9/2018	Cheyne MLA	EPSDD	Compliance checks	2/10/2018

APPENDIX D – ADDITIONAL COMMENTS MS LE COUTEUR MLA

Caroline Le Couteur MLA

Additional comments and recommendations

It is clear from the community and industry feedback received by the inquiry that the ACT's planning system needs substantial reform. The committee agreed on 66 recommendations that will change the planning system to be more transparent, timely and efficient.

However, Liberal and Labor members of the committee did not agree with other recommendations that I believe would address key issues raised by the community such as:

- How can residents impacted by development proposals have their say and have it listened to;
- Ensuring that Canberra has sufficient affordable housing, in convenient locations to house our residents;
- Allowing new housing and renovations can be made in existing locations while addressing amenity, traffic, character and environmental issues; and
- Effectively addressing environmental issues

IMPACT OF REDEVELOPMENT IN LOW-RISE RESIDENTIAL ZONES

Many submissions to the Committee raised concerns about inappropriate development in low-rise residential areas – those areas covered by the RZ1 and RZ2 zones.

These areas are intended for lower-rise, lower-density housing. However, in many cases, as suburbs age one small home is being replaced by one very-large home with no or limited green space. In some parts of Canberra such as Macquarie and Campbell, three or four very-large homes are being jammed onto a standard residential block.

Frustratingly, most of the new homes built in Canberra are far too big for older people wanting to downsize and are unaffordable for younger people struggling with housing, including first home buyers. These very-large homes are also environmentally unsustainable.

These problems are exacerbated by the planning system. Current planning rules encourage knock-down rebuilds and multi-unit developments that build to the edge of the block, leave no room for trees and green space and have a very high impact on the amenity of neighbours. More modest homes with larger green areas that would suit younger Canberrans and older downsizers are discouraged.

Frustratingly if an existing modest house is retained and a granny flat added, that will require public notification and planning approval. However high-impact, very-large single houses are exempt from having to get planning approval.

Requiring approval for less major developments but not for large new dwellings encourages knock downs to build large new houses. It also means that means the local community has no say and no way to influence the type of development impacting on their local area.

Canberra has the dubious honour of having the largest new homes in Australia. Our planning system is part of the reason and this we can change.

Looking more broadly Australia's taxation and financial system are major parts of the reason that we are simultaneously building large new houses while increasing homelessness and reducing housing affordability.

The Committee also heard from many residents concerned about the way re-development is leading to the loss of trees. This included disturbing evidence about rogue builders deliberately trenching in the root areas of trees they were required to protect. Residents made several sensible suggestions for how the impact on trees could be fixed, but two of the suggestions (barriers around trees and more powers for the conservator) have not been supported by the Liberal and ALP members of the committee. I believe these are good suggestions and should have been included in the report.

Additional recommendations

1. **That the ACT Government substantially reform planning requirements for redevelopment in low-rise residential zones (RZ1 and RZ2 Zones) to block developments that damage the amenity of existing neighbourhoods and encourage affordable housing.**

2. **That the ACT Government change the development application exemption for dwelling extensions and knock-down rebuilds in existing suburbs to only apply to low-impact proposals, for example single-storey development with substantial setbacks and a low site coverage which will not overshadow neighbouring dwellings.**

3. **That the ACT Government strengthen the powers of the Conservator so that they can consider the value of trees for the amenity of the surrounding area when recommending which trees should be kept and which can be removed.**

4. **That the ACT Government require barriers or cages to be installed at the drip line of trees that are to be retained during development.**

APPEAL RIGHTS

The overwhelming weight of evidence was that the rights of residents and community groups to appeal approvals should be expanded. Only the development industry called for appeal rights to be wound back. The ACT Greens do not believe that appeal rights should be wound back. Instead, we believe that they should be expanded.

Additional recommendations

5. **That the ACT Government considers expanding appeal rights in line with community feedback to this Inquiry.**

6. **That third party appeal rights are expanded to cover all Development Applications where the approval allows for the removal of a registered tree.**

7. **That an appeal mechanism is introduced for the approval of Environmental Impact Statement Exemptions.**

8. That the ACT Government considers legislative changes to provide for wider standing for community and environment groups at the ACT Civil and Administrative Tribunal.

REGULATION OF BUILDERS

The Committee heard evidence from several witnesses who had been seriously impacted by builders not complying with planning rules, and a general concern from many that current regulation of builders and developers is not strong enough to stop rogue operators from flouting the planning rules. While I agree that enforcement has been strengthened over the last two year, I believe that more needs to be done. The Liberal and ALP members of the Committee did not agree to the following recommendation, but I believe that it is a common sense and no cost measure that would go a long way to stopping builders who are 'repeat offenders'.

Additional recommendation

9. That where a builder has been the subject of regulatory action by Access Canberra, the certifier for their future projects is appointed by the ACT Government.