

A.C.T. PLANNING AND LAND AUTHORITY RESPONSE
TO
ACT AUDITOR-GENERAL'S REPORT -
DEVELOPMENT APPLICATION AND APPROVAL PROCESS
REPORT NO 2/2005

KEY FINDINGS

Efficiency and timeliness

- *The DAA process is not well integrated across the various agencies involved and referrals to other agencies do not occur in a consistent manner. This can lead to delays, as not all referral agencies have statutory timeframes in which to respond to referrals. The referrals process, in particular, requires a major review, as the ramifications of mistakes, omissions and delays are significant.*

The ACT Planning and Land Authority tries to ensure that all relevant government agencies are advised about development applications and given appropriate opportunities to comment. Concerns about current processes from both the agencies and applicants (often in terms of timeliness of agency responses), however, are acknowledged.

The Authority recognises improving the performance of agency referrals as a priority issue in its planning system reform project.

- *Much of the assessment process is not well documented, including the consideration of objections, agency comments and the principles of Ecologically Sustainable Development.*

This finding relates to simple development approvals (i.e. where there are no objections and where the application is neither conditional approved nor refused). In that case the Land Act does not require a statement of reasons. Paras. 2.40 and 2.41 of the report explain this distinction.

- *The quality control for document management was poor, especially with hard copy files.*

The report notes that the Authority is in the process of moving from a paper based filing system to an electronic system. See next dot point.

- *Although electronic files also had some quality control problems, they were generally found to have a better records management system than hard copy files. The audit log tool currently available in the Authority's IT system, named "Objective", together with controls over access to electronic files, will improve quality control and accountability.*

Agreed.

- *The status of various sources of information, such as guidelines, interim guidelines, advisory notes, and codes for best practice, is not always clear.*

Agreed. This issue is being dealt with through the Authority's planning system reform project.

- *Many DA decisions did not meet statutory timeframes. Where these timeframes were not met, DAs took significantly longer to be determined. When examining DA data provided by the Authority (which covered all DAs assessed during 2003-04), Audit found the time taken for a large number of Single Residential DAs, for which the statutory timeframe is 30 working days, exceeded 60 working days. Many exceeded 100 working days.*

It should be noted that the majority of DA decisions meet statutory timeframes – for 2003-04 87% of single residential DAs, 71% of all other DAs.

The report also recognises that 100% of the single residential DAs examined by Audit were determined within the statutory timeframe (para 2.45 of the report). The data used by Audit in making the above comment: “Many exceeded 100 working days” reveal that less than 1% of single residential DAs (36 out of a total of 4,576 for 2003-04) exceeded 100 working days.

- *Performance against statutory timeframes in some cases may be inappropriately enhanced by procedures such as asking the applicant, close to the statutory due date, to apply for an extension of time.*

It is agreed that extensions of time related to requests by the Authority for more information should occur as early as possible in the process. This is not, of course, always possible. The planning system reform project is also looking at aspects of this issue. It should also be noted that there was not a high incidence of extensions of time for DAs in 2003-04 – only 0.04% of single residential and 12.7% of other DAs, or less than 2% of all DAs.

- *Pre-application processes, which occur before a DA is lodged, can be very time consuming, but information about the time taken by applicants prior to consulting the Authority is not collected by the Authority, so measures for improvement are difficult to identify.*

Pre-application processes are administered by the Planning and Land Authority on a non-mandatory basis and are difficult by their nature to monitor consistently. New measures introduced in the latter part of last year have to a large extent placed the pre-lodgement processes in the hands of proponents.

The planning system reform project is also looking at this issue. In particular, the project is examining the usefulness of private sector

certification of documentation prior to lodgement and optional preliminary or “in principle” approvals.

Fairness

- *The small number of appeals, out of the total DAs that are assessed, suggests that the vast majority of DAs do not have major objections to the fairness of decisions.*

Agreed.

- *The majority of AAT decisions generally find in favour of the Authority, which suggests that the Authority’s decisions are generally fair as they can withstand independent scrutiny.*

Agreed.

- *Lack of documentation and the consequent lack of transparency fails to demonstrate that decisions are objective and fair in all cases.*

It is assumed that this comment principally relates to simple approvals where a statement of reasons is not required under the Land Act. Substantial documentation of decisions is prepared in respect to more complex proposals. Refer also to response to dot point 2 under “Efficiency and timeliness”.

- *In less complex cases where a single officer both assessed and approved DAs, this was not checked or reviewed before the development approval was issued. If a review had taken place, it had not been documented. This lack of review may reduce that ability of the Authority to demonstrate objectivity, consistency and fairness.*

It is not practicable within the resources available, cost-effective or necessary for all simple approval decisions to be checked and reviewed before the development approval is issued. Procedures exist for checking and review of assessments for more complex applications.

Consistency with guidelines and legislation

- *The legislation governing the DAA process is very complex and there are many layers of information which impact on the process – such as Regulations, planning guidelines, lease requirements, land use policies, the requirements of other agencies, objections, and the principles of Ecologically Sustainable Development.*

Agreed. The planning system reform project is addressing this issue.

- *There exists some risk that fast approvals fail to meet legislative requirements unless a greater degree of assurance is required to be provided by the*

applicant, followed by appropriate compliance activities. For example, applicants should be required to sign a statement that clearly acknowledges that the applicant has read and understood what constitutes a tree damaging activity, and knows that it is an offence to carry out this activity without the appropriate approval.

This issue will be further examined by the Authority. However, it is the experience of the Authority that an applicant's signature to such statements cannot be relied on as evidence of an applicant's real understanding of these matters.

- *The Authority failed to meet statutory requirements for DA assessment timeframes in a number of cases. Audit noted that the data provided by the Authority shows an average of 14% of single residential DAs and 28% of non-single residential DAs failed to meet statutory timeframes during the period July 2002 to March 2005. Of the small sample of DAs examined by Audit, 70% of non-single residential DAs failed to meet their statutory timeframes.*

It should be noted that the number of cases examined by Audit represents about 0.5% of total DAs over a year. The non-residential DAs in the Audit which ran significantly over time attracted objections and presented particular problems in resolution. As the report also notes, however (para. 2.45), 100% of single residential DAs in the Audit sample were determined within the statutory timeframe.

- *Guidance material is available to staff and applicants to assist compliance with legislative processes. However, it is so extensive that it can be difficult to understand, and difficult to determine what guidance to follow where a discrepancy exists.*

Agreed. The planning system reform project aims to rationalise and clarify guidance material.

- *Checklists are used to help ensure consistency with legislation and guidelines (such as planning guidelines) but they are not used consistently and not always completed.*

Noted. Staff have been instructed to be more diligent in their use of checklists and senior officers will conduct random checks to ensure compliance.

- *There were a number of statutory fees and charges associated with DAs. Fees, however, are not clearly identified on DA forms and due to the absence of receipt numbers recorded, it could not be demonstrated that all payable fees and charges had been collected.*

Noted. Fee receipts are saved in the relevant DA file in the electronic records management system.

- *The quality and availability of guidelines vary across the Authority's DAA activities. For example:*
 - *certain procedural guidelines exist for staff such as those covering the public notification process. The Authority's compliance with these legislative requirements is of a high standard; and*
 - *adequate guidance material is not currently available to staff in a number of key areas of the DAA assessment process, such as the consideration of objections, agency comments and the principles of ESD. For example, no guidance is yet available on how to weigh the various aspects of ESD.*

Noted. The planning system reform project aims to review and rationalise existing staff checklists and guidance material. In the interim, the Authority will ensure that further guidance material is made available to staff. New documentation in the form of the 'Good Design' series of publications contains some guidance on ESD principles.

- *The Authority provides staff with informal, on-the-job training to educate staff about legislative requirements. This should be supplemented by formal training to improve staff knowledge and expertise.*

Noted. The Authority will develop and deliver further training programs for staff within the financial resources available to it.

- *Although the Authority does a lot of consultation on a wide range of issues, stakeholders report that much of this consultation is of reduced value because the Authority fails to provide feedback on comments and input, and often consultation occurs too late in the process to make any real difference to the outcome of a project or issue.*

Noted. This is a complex issue that will in part be addressed through the planning system reform project and implementation of the Government's new Community Engagement Manual 2005: *Your Guide to Engaging with the Community*.

- *The compliance section did not maintain adequate levels of compliance activity during the period under review. Audit understands that the section was not fully staffed at the time.*

Noted. The Authority has to operate a number of core functions within the budget resources provided to it and will at any point in time have vacancies and staff on leave that impact on the capacity of some business units at different points in time.

- *Compliance against conditions of development approval is not systematically checked.*

Noted. A more systematic approach will be developed and implemented.

- *Not all complaints in relation to alleged breaches of development conditions were investigated.*

Agreed, however, the number of complaints received exceeds the resource capacity of the Authority and therefore it is necessary to prioritise.

The Authority will develop a risk analysis approach to compliance checking as part of the planning system reform project. The project also includes consideration of new laws to establish a more formal complaints system (See Recommendation 20).

- *Compliance checks and inspections are not always well documented and therefore, the status of a development's compliance is not clear.*

Noted. Staff will be instructed to be more rigorous in documenting compliance action.

- *The Authority does not clearly identify a telephone number to the public for the purposes of making complaints about activities that may not be complying with legislative requirements.*

Noted. This will be further investigated with Canberra Connect.

Application of ESD principles

- *The Authority has been and is doing a lot of work to improve sustainability in the building and development industry in the ACT and it has contributed to the education of a range of stakeholders on the importance of sustainability in the DAA process. For example, new homes are required to meet minimum energy efficiency ratings.*

Agreed.

- *The Authority has developed policies with the assistance of expert authorities. It has also sought expert advice on a number of DAs, through the referrals process and use of the Planning and Land Council, which has expert members.*

Agreed.

- *Although the Authority seeks expert advice and comments on many DAs to help inform decisions, the consideration and use of this expert advice and comment is not well documented.*

Documentation of advice and comment will be reviewed and improvements made as necessary.

- *The Authority has not yet developed ESD guidance material for staff to use at the individual DA level. Audit recognises that this is a challenging task, which is faced with hurdles such as getting agreement on the definition of what is “sustainable”. Audit also recognises that the Authority experiences similar problems to bodies in other jurisdictions, and where new tools are being developed and introduced, the Authority is investigating the adoption of these.*

Agreed, however, new documentation in the form of the ‘Good Design’ series of publications contains some guidance on ESD principles.

- *On-the-job training, which is the dominant form of training used by the Authority, does not ensure that all staff, especially those without formal and relevant qualifications and expertise, understand the principles of ESD. On-the-job training should be supplemented by more formalised training, which could utilise in-house and external expertise, to improve the understanding of staff throughout the Authority, and therefore help to ensure consistency.*

Agreed subject to the availability of financial resources.

RECOMMENDATIONS

Recommendation 1

The Authority should improve records management procedures by means such as:

- *ensuring that all documents entered into the Objective program are dated and, where appropriate, there is evidence that the document has been signed;*
- *where there is no information to be entered into a file on the Objective program entering "NIL" (or similar) to indicate that there has not been an omission; and.*
- *ensuring that if hard copy files are to be maintained, they are indexed, documents are filed chronologically, and no loose documents are contained in files.*

Agreed.

Recommendation 2

The Authority should monitor and record the time and effort taken to move through the pre-application process, where practicable, with a view to identifying where problems are occurring, the reasons for any delays, and how improvements can be made.

Agreed in part. This will be further reviewed through the planning system reform project (refer to response to dot point 8 under "Efficiency and timeliness"). However, this will be a difficult exercise given that pre-application processes are not mandatory and the amount of time and effort involved is largely at the discretion of the applicant.

Recommendation 3

The Authority should ensure that for fees payable on lodgement of a DA, the individual and total fees due and receipt numbers are clearly recorded for all DAs. Where this information is not recorded on the DA Form, a notation on the form should identify that the information is filed in the Objective program.

Agreed in part. The Authority will ensure that fee receipts are filed correctly on Objective.

Recommendation 4

The Authority should:

1. *for fast approvals, require a greater level of assurance from applicants that they understand legislative requirements, for example, the requirements of the Tree Protection (Interim Scheme) Act 2001 and their responsibilities under the Act, or a declaration that no other known issues on the site would prevent an approval being granted; and*
 2. *work to ensure that action is taken against applicants who provide false or misleading information.*
1. **Agreed in part. This will be further reviewed but such statements by applicants cannot always be relied upon.**
 2. **Agreed.**

Recommendation 5

The Authority should review the practice of a single officer assessing and approving a DA, based on an appropriate risk assessment. This would improve the consistency and objectivity of assessments.

This is already the practice for more complex proposals and whilst the Authority will review the merit of a similar approach for simple DAs, the merits of this will have to be balanced against its practicality, cost-effectiveness and benefit when having regard to resources and impacts on timeliness of such approvals.

Recommendation 6

The Authority should review the current policy for disclosing the details of an objector after they have submitted an objection to a DA. Maintaining the confidentiality of objectors, if requested, removes a potential impediment to legitimate objections.

Agreed in part. However, the Land Act (section 238) requires the Planning and Land Authority to make a copy of each objection available for inspection by members of the public during office hours until the end of the appeal period.

Section 239 nevertheless allows the Authority, on request of the objector, to exclude the identity of the objector from being made available subject to it not being in the public interest for that identity to be published. In practice, the Authority would agree if the objector says they have plausible concerns about reprisals if their identity becomes known. Elements of the notification and representation

procedures are to be reviewed through the planning system reform project. This issue will be incorporated into the review.

Recommendation 7

The Authority should formalise and document the consideration of objections to ensure that each objection is considered on its merits.

Agreed in part. However, it is already the case that the documentation attached to the Authority's statement of reasons, where required, includes consideration of objections. Nevertheless the process for considering objections will be reviewed and improved where necessary.

Recommendation 8

The Authority should ensure that comprehensive checklists are developed and used by all staff for development assessments in each development category.

Agreed. This will be implemented for those categories of development application where such practices are not already commonplace.

The planning system reform project includes assessment of procedures required for each of the proposed five assessment tracks (exempt, prohibited, code, merit, impact). This assessment will also involve a review of existing checklists and related procedures with further development as necessary.

Recommendation 9

The Authority should document the reasons for decisions for all DAs, in order to improve the transparency, fairness and reliability of the DAA process.

Agreed in part. Assessment documentation will be reviewed but it will not be practicable to provide a detailed statement of reasons for simple approvals and this is not required under the Land Act.

Recommendation 10

The Authority should review the practice of approaching applicants about applying for extensions of time, particularly when the time allowed for completing the assessment is almost over, to ensure the intent of statutory timeframes is not circumvented. The Authority should consider processes such as those used in NSW for this purpose.

Agreed. This issue, including the suitability of approaches in NSW and other jurisdictions, will be considered in the planning system reform project.

Recommendation 11

The Authority should report its performance against statutory timeframes for the determination of DAs in a more prominent section of its Annual Report and on its website.

This will be considered, however, it should be noted that statutory timeframes are not the only performance indicator.

Recommendation 12

The Authority should maintain a central database that has more capabilities than the DARTS system currently used, with a view to making it easier to analyse and report on data. In addition to recording standard DA information, the database should record relevant information to identify the reasons for delays in the process so that improvement can be made where required.

Agreed. DARTS should be replaced as soon as possible; however this has not been possible to date due to limited funding available for IT systems upgrading.

Recommendation 13

The Authority should work with key stakeholders to review and improve the referrals process by:

- *formalising and standardising methods of referral and provision of comments on referrals; and*
- *simplifying and integrating the referrals process.*

Agreed. This is a priority issue for the planning system reform project.

Recommendation 14

The Authority should reply to agency comments, giving an indication of whether the Authority has adopted the comments, and if not, give reasons. Where the Authority proposes changes to the agency comments (to allow for them to be incorporated into Authority documents), it should ensure that they do not change the original intent of the comments.

Agreed. As part of the administrative reforms of the planning system reform project, this measure will be implemented where such comments are specific and directly related to the development

proposal; some agency comments are generalised and non-specific to what can be regarded as valid planning considerations.

Recommendation 15

Environment ACT (CMD) and relevant agencies should contribute to improvements in the referrals process by means such as:

- *providing formal advice to the Authority on the implementation of the referrals process, particularly when difficulties are experienced;*
- *refining the internal procedure for dealing with referrals, with a view to identifying who is involved and who will provide the response to the Authority in each case, within an agreed timeframe;*
- *including those comments that are relevant to a particular DA, rather than general comments; and*
- *monitoring and reporting performance in relation to timeliness of providing a written response to the Authority or applicants.*

Agreed. This is being covered under the planning system reform project.

Recommendation 16

The Authority should improve documentation of processes and outcomes when seeking expert advice and comments.

Agreed where this is not occurring.

Recommendation 17

The Authority should systematically and holistically review all DA guidance material in order to simplify it, reduce discrepancies or overlap, and clarify the status of each piece of guidance material.

Agreed. This is an intended outcome and action for the administrative reforms of the planning system reform project.

Recommendation 18

The Authority should develop a more formalised training program to improve staff's understanding of legislative requirements and the principles of ESD, as they apply to individual DAs.

Agreed, within available financial resources.

Recommendation 19

The documentation of compliance activities should be improved to ensure that:

- *all complaints and compliance activities are clearly allocated to either individual staff members or sections of the Authority. Where these are passed from one staff member or section to another for follow up, the file should contain evidence that the person or section to whom/which it was referred has taken the responsibility to take action on the issue; and*
- *where references are made to the work or decisions of other sections of the Authority, this is either linked in the Objective program, or full details of the work or decisions are provided.*

Agreed.

Recommendation 20

The Authority should:

- *address all complaints and where no action (or no further action) is to be taken, the decision and the reasons supporting it should be documented;*
- *conduct a risk assessment of non-compliance with development approval conditions, which looks at both the likelihood of non-compliance occurring and the potential impact of non-compliance. Where risks are identified as being too high, the Authority should work to improve compliance; and*
- *develop a formal procedure for checking and documenting compliance against the conditions of development approvals. The compliance record should also be clearly linked to the development approval in the Objective program.*

Agreed. This will be implemented to the extent that investigating all complaints is possible within the resources available and therefore prioritising is necessary based on potential public health and amenity impacts.

In addition, as part of the planning system reform consideration is being given to new laws for the establishment of a more formal complaints procedure as well as the establishment of a risk analysis approach through administrative reform.

Recommendation 21

The Authority should revise consultation practices in order to better deal with the contributions made, and issues raised, by stakeholders, such as:

- *the time frame allowed for consultation;*
- *feedback to contributors; and*
- *documentation of comments received and considered.*

Agreed. This will be considered in the planning system reform project and in implementation of the Community Engagement Manual 2005 *Your Guide to Engaging with the Community*.

Recommendation 22

The Authority should make better use of environmental assessments to assist in their consideration of ESD, by means such as:

- *reviewing the requirements for Preliminary Assessments (Division 4.2 of the Land Act) and other Assessments (Division 4.3 of the Land Act) so that adequate information is obtained on social, economic and environmental issues relevant to a proposal;*
- *ensuring that Development Assessments clearly document their consideration of information contained in Preliminary Assessments and other Assessments; and*
- *Documenting details of the justification for any decision to waive the requirements to prepare an environmental assessment.*

Agreed. This is one of the significant matters being reviewed in the planning systems reform program.