

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON
PLANNING AND URBAN RENEWAL REPORT 12 – Inquiry into
Engagement with Development Application Processes in the ACT**

**Presented by
Mick Gentleman MLA
Minister for Planning and Land Management**

Introduction

The Government thanks the Standing Committee on Planning and Urban Renewal for the recommendations put forward in *Report 12 – Inquiry into Engagement with Development Application Processes in the ACT*.

The Report was produced after the Standing Committee on Planning and Urban Renewal had resolved to inquire into and report on engagement with Development Application (DA) processes in the ACT, with reference to community engagement and participation in the DA process, the accessibility and effectiveness of DA processes, DA compliance assessment and enforcement measures, DA practices and principles used in other Australian jurisdictions and any other relevant matters.

As part of the Inquiry, the Government's submission provided information in response the Terms of Reference of the Inquiry and outlined key legislative processes and the role of the planning and land authority in the DA process.

The report highlights key areas where improvements to engagement with the development application process in the ACT can be made. Key areas highlighted by the report include:

- Stakeholders' perceptions and consultation, include pre-DA advice and consultation;
- Statutory notification and awareness of development applications, including the opportunity to comment on DAs pre-decision and the accessibility and community understanding of DA information;
- Accessibility of DA information;
- DA lodgement and assessment, including considering the impacts of developments on amenity and the environment and DA processing times;
- DA reconsiderations and appeals;
- Heritage, tree protection and environment assessments;
- Compliance assessment and enforcement measures; and
- Development applications and the planning framework.

Over the course of time between the announcement of the Committee's Inquiry and the tabling of the report, the planning and land authority has made significant improvements in its processing of DAs to ameliorate delays and previous inefficiencies and to improve community accessibility and consultation.

During 2018 the planning and land authority implemented a staged assessment model to deal with the larger volume of DAs. This model has been further refined to provide greater efficiency. The model is based on six assessment stages being dealt with by different officers. The model also has wellbeing, probity and integrity benefits, in that all DAs are processed as a team effort and no DA is processed anymore by a single officer.

The ACT Government, through the planning and land authority, is committed to providing a robust and efficient planning and development assessment system. Ten people have been employed or redeployed from other areas within the Environment, Planning and Sustainable Development Directorate (EPSDD) to assist the planning and land authority to assist with the processing of development applications. This includes six new assessing officers that were funded by the ACT Government and commenced with the authority in August and October last year. The new assessing officers are assisting in reducing the current backlog in processing development applications and the additional staff now allows the planning and land authority greater flexibility in targeting particular development application types to reduce the backlog. Limited overtime work is undertaken as needed and on a voluntary basis.

In response to the COVID-19 public health emergency an additional two officers with significant DA experience were redeployed from other areas within the directorate to assist the authority. The redeployed officers primarily focussed on considering applications for government projects and 'shovel-ready' projects.

The planning and land authority has also placed additional focus on processing amendment applications and applications to satisfy conditions of approval, including endorsement of plans. This has allowed industry to receive stamped plans faster, assisting industry with initiation the building approvals process, securing financing and continuing construction activity.

Over the last year the planning and land authority has made significant improvements to DA processing times, processing approximately 20% more application than it has received. The number of active DAs has decreased by 44% since July 2019, with the number of applications lodged remaining steady. Major improvements are already being seen with the planning and land authority processing more applications than it is receiving.

From the beginning of 2020, the authority has placed greater emphasis on determining smaller development applications that are still within the statutory timeframe. These developments are generally in the single dwelling category, lodged by smaller builders, with less than \$1m cost of works. This approach is supporting smaller businesses.

The ACT Government has also launched the Build, Buy, Renovate website to assist consumers and industry understand their rights in relation to building a new home, including purchasing into a multi-unit development. The Build, Buy, Renovate website also contains information on dispute resolution for builders, purchasers, and neighbours.

EPSDD is also currently undertaking a project to re-write website content relating to development and building processes to ensure that it is easily understood by a wide audience, including the general public who have limited experience with these processes. The updated content is now available.

The planning and land authority has also reviewed its Pre-DA Community Consultation Guidelines (the Guidelines) to determine if they are meeting their aims since being implemented in November 2017.

The review of the Guidelines identified opportunities to increase public awareness and understanding of the purpose of pre-DA consultation, ensure the content of the Guidelines reflects the aims and intent of pre-DA consultation and to ensure proponents continue to utilise a range of consultation tools and comply with all requirements.

The review made a number of recommendations around the triggers for Prescribed Developments, the exceptions for pre-DA community consultation, the minimum consultation activity requirements and documentation requirements and consultation implementation. The results and recommendations of the Review reinforce the purpose of the pre-DA Community Consultation Guidelines as an opportunity for the community to provide feedback early in the design process for significant developments. This is one part of the delivery of a more citizen-focused planning system with the goal of delivering good planning outcomes for both the community and industry.

The Chief Planning Executive and the Minister for Planning and Land Management have agreed to implement all recommendations from the Review and work is now underway and expected to be completed in August 2020.

The Government agrees or agrees in principle to 47 of the 66 recommendations in the Committee's report, noting that a number are already being considered as part of work being progressed through the Planning System Review and Reform project that is currently being undertaken by the Environment, Planning and Sustainable Development Directorate.

There are seven recommendations that the Government does not agree to. In the instances that a recommendation is not agreed to, the current legislation or process already provides an appropriate and balanced approach to the issue being recommended.

Detailed responses to each recommendation are provided below.

ACT Government Response to the Standing Committee on Planning and Urban Renewal Report No. 12 – Inquiry into Engagement with Development Application Processes in the ACT

- 1. 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.**

Government Response: Agreed in principle

The National Capital Design Review Panel (NCDRP) provides independent, expert and impartial design advice on significant development proposals in the early stages of design development. The NCDRP's advice is guided by the 'Design Principles for the ACT' and is provided to the proponent for consideration of related design matters. The proponent is required to provide a response to the NCDRP's advice when lodging a development application (DA) for assessment. The response is also included in any public notification of subsequent development applications.

The planning and land authority (the authority) encourages early engagement with the authority and other government agencies prior to lodgement of a DA. Pre-application meetings can occur at any stage prior to lodgement at the request of the proponent. The meetings generally relate to issues around interpretation and application of the Territory Plan, the Planning and Development Act and the requirements of other government agencies. The previous advice that is provided to the proponent by the NCDRP may also be provided at this stage to inform the pre-application process.

- 2. 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.**

Government Response: Agreed

The Environment, Planning and Sustainable Development Directorate (EPSDD) completed a review of the Pre-DA Community Consultation Guidelines (the Guidelines) in November 2019 (the Review).

The Review produced a number of recommendations including: updating development triggers and exceptions, encouraging a greater range of consultation methods, development of a charter of participation identifying the scope of engagement to community and industry, and a need to implement stronger enforcement methods to ensure consultation is undertaken in accordance with the requirements. Implementation of the recommendations of the Review is currently underway and is expected to be completed in August 2020.

- 3. 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.**

Government Response: Agreed

A key recommendation of the Review of the Guidelines was to reassess the triggers for developments which require pre-DA consultation. The Review concluded, based on consultation with community and industry, the development triggers should be expanded to include:

- Estate development plan (EDP) DAs in existing suburbs and areas with established communities; and
- All developments that are required to be reviewed by the National Capital Design Review Panel.

Further, the Review recommended that the areas currently excepted from pre-DA consultation be reviewed and limited only to greenfield areas with no existing communities. Implementation of the recommendations of the Review is currently underway and is expected to be completed in August 2020.

The ACT Planning System Review and Reform project will also present an opportunity to evolve the ACT's planning system in a holistic and strategic way in line with contemporary best practice, including development assessment processes.

The Planning Review project is progressing in 2020, with potential legislative changes to be considered in 2021.

- 4. 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.**

Government Response: Agreed

The Guidelines already require an applicant to prepare and submit a report to the planning and land authority as part of the documentation lodged and publicly notified for a DA.

The Minimum Documentation Requirements detailed in the Guidelines require a report which summarises the comments received by the community and details on how the final design responds to the community's concerns. The Guidelines state that this report must be submitted with a DA and the report will be made publicly available through the statutory notification period for the DA. The authority, through its completeness check process, will not accept a DA for formal lodgement which does not include this report.

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

Government Response: Agreed

Under the current Guidelines, applicants are required to ensure people living in areas immediately surrounding the development and the wider community (as appropriate) are informed of the intended consultation process and consulted on the proposal. This includes engaging with the local community council.

The Guidelines also require that the consultation is advertised on the ACT Government website as the first step in the consultation process, to ensure there is adequate notice. To further ensure that there is adequate notice and a reasonable period of consultation, the Review recommended that a requirement for a two-week minimum consultation period be added to the Guidelines.

Face-to-face engagement is the primary type of engagement and is undertaken in conjunction with other forms. This has been modified to include webinars, letterbox drops, newspaper advertising and other online feedback and engagement tools during the COVID-19 public health emergency. In addition, the applicant must ensure that face-to-face engagement sessions are made accessible to a diverse cross-section of the community in consideration of location, timing, number and type of sessions.

- 6. 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.**

Government Response: Agreed

Through the Review, EPSDD has engaged with the community and industry on best practice approaches to community consultation. The Guidelines detail minimum requirements, as well as providing tips and suggested tools to ensure consultation is most effective.

A key recommendation from the Review was to develop a charter of participation which seeks to increase awareness of the consultation process. The charter will ensure proponents and participants know what to expect from the process, what successful engagement looks like, and to provide a reference for appropriate behaviour to improve accountability for all parties.

- 7. 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.**

Government Response: Not agreed

The authority does not consider it appropriate to treat DAs differently based on an assessment of community interest. Under the *Planning and Development Act 2007* (the Act), proponents are entitled to submit an application for assessment under the statutory process and the Territory Plan requirements.

The Act provides for different assessment tracks, as well as different notification pathways depending on the type of application submitted. The authority considers that the current public notification procedures are well-established and perform the function of providing an opportunity for community comment well.

EPSDD has taken steps to strengthen communication engagement and consultation through its implementation and review of the pre-DA consultation guidelines to ensure that DAs which are likely to be of interest to the community are required to undertake pre-DA consultation. This provides an early opportunity for the community to comment on a development proposal, but also to be aware of the proposal and follow it through to the development application stage. EPSDD also engages with community councils through the Environment and Planning Forum meetings, which provide representation for all community council chairs, heads of property focused industries including the HIA, MBA, PIA and property council and community focussed groups such as Pedal Power, ACT Council of Social Services and Council of the Ageing.

The authority agrees that informing as many community members as possible, and providing an opportunity to make comments, is an important goal. However, there is an unacceptable risk that the authority will be seen to be supporting or opposing a particular development which it chooses to advertise on social media should this approach be implemented.

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

Government Response: Agreed in principle

Under the current system of public notification in the Act, DAs of increasing complexity are respectively identified as code, merit or impact track. The public notification processes scale up depending on the assessment track, with impact track developments requiring consultation on the environmental impact assessment phase.

Most merit track applications fall within the major notification category and as such are subject to letters being sent to adjacent neighbours, signs displayed at the property, and the DA notified on the authority website for a minimum 15 days period.

Where necessary and appropriate, the authority may extend the public notification period to ensure that there is a fair and reasonable opportunity for public comment.

The authority considers that the public notification provisions in the Act strike an appropriate balance between the right to community oversight and comment, and the right for an applicant to have an application notified and assessed in a timely manner.

- 9. 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.**

Government Response: Agreed in principle

It is an existing process of the authority that days of a DA which are notified over any period of public holidays are not included within the notification period. This occurs for the days that the Directorate is not staffed. Over the Christmas/New Year period, Access Canberra has a policy to add five additional working day to the public notification period for DAs notified in the (approximately) two weeks leading into Christmas. Additionally, DAs are not notified over the Christmas/New Year period. Notifications can then commence on the first working day back in the New Year.

This recommendation will require changes to the Act. Any changes to the provisions of the Act will be considered as part of the broader ACT Planning System Review and Reform project currently underway. The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

It is considered that the current approach provides an appropriate balance, with sufficient time for review of material during these periods.

- 10. 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.**

Government Response: Not agreed

The reconsideration process is an internal decision review process available to an applicant, whereby they can apply to the authority to have another, more senior, delegate of the planning and land authority consider the DA and the original decision.

This is not a new application process and does not allow a new development proposal to be considered. Rather, it is a continuation of the assessment process for an original application and only applies in limited circumstances as set out in section 193(3) of the Act.

The Act currently strikes the right balance by alerting those who made a representation on the original application to the fact that a reconsideration application has been lodged and providing an opportunity for further comment.

- 11. 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.**

Government Response: Not agreed

DA signage is required as a result of statutory notification processes that are set out in the Act. In 2017, the authority undertook a project to review and improve the language and visual appeal of DA signage and to make signage more user-friendly for the community. Several improvements were made including altering the language used to make it easier to understand whilst also complying with legal obligations. The visual appeal of signage was also improved and branding aligned to mirror ACT Government brand guidelines.

Currently the signage provides individuals with DA details, directions on accessing documentation on the planning and land authority website, where the plans can be viewed in person, and forms of contact for assistance.

DA signs serve as a means of notifying the local community of the proposal and where further information can be obtained, rather than a source of information itself.

The authority agrees that informing community members as much as possible is an important goal. However, there is an unacceptable risk that the authority will be seen to be supporting or opposing a particular development with the selection of images should this approach be implemented.

- 12. The Committee recommends that the Directorate expedite improvements to the Development Application Finder App.**

Government Response: Agreed

EPSDD has recently engaged an app developer to commence works on a DA Finder App version 3. Work is currently progressing on this upgrade which will improve reliability, accessibility and tracking of DAs and is expected to be completed in early 2021.

- 13. 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.**

Government Response: Agreed in principle

The ACT Government, through EPSDD and Access Canberra, is considering options in relation to the best product to deliver an update to the eDevelopment portal and will consider options to incorporate elements of this recommendation through allowing community members to access any DA and its associated forms, plans and supporting documents through the notification process. It will also consider allowing access to previous decisions on DAs lodged through the upgraded platform.

- 14. 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.**

Government Response: Not agreed

The authority is currently reviewing its published material to ensure that it effectively communicates information about development application and planning processes to the general public.

Also, the authority's DA Gateway Team provides a customer service function and are the first point of contact for all enquiries relating to ACT planning matters and the DA process. This team is customer-focussed, experienced and available to the general public and proponents to discuss any planning related query during business hours.

- 15. 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.**

Government Response: Noted

Any changes to the provisions of the Act will be considered as part of the broader ACT Planning System Review and Reform project currently underway. The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

- 16. 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.**

Government Response: Noted

Any changes to the provisions of the Act will be considered as part of the broader ACT Planning System Review and Reform project currently underway. The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

- 17. 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.**

Government Response: Agreed

The authority has recently undertaken work to standardise conditions on notices of decision and administrative information to improve readability which will be implemented soon. Opportunities are continually being explored for ways to improve the readability of Decisions for applicants and the community.

- 18. 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.**

Government Response: Agreed

The authority has a significant amount of information available on its website, www.planning.act.gov.au, aimed at assisting the community and proponents to understand and engage with the DA process. The ACT Government has also launched the Build, Buy, Renovate website to assist consumers and industry understand their rights in relation to building a new home, including purchasing into a multi-unit development. The Build, Buy, Renovate website also contains information on approvals, processes during construction and dispute resolution for builders, purchasers and neighbours. EPSDD is also currently undertaking a project to re-write website content relating to development and building processes to ensure that it is easily understood by a wide audience, including the general public who have limited experience with these processes. The updated content is now available on the planning and land authority website.

The authority will continue to review this information and providing new information where it is necessary. For example, the authority recently published information explaining the development approval amendment process on its website. The authority has also recently reviewed exempt development content which will be moved to the Build, Buy, Renovate website.

- 19. 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.**

Government Response: Agreed

The authority will review current information on its website and prepare or update supporting fact sheets to further assist the community. EPSDD is also currently undertaking a project to re-write website content relating to development and building processes to ensure that it is easily understood by a wide audience, including the general public who have limited experience with these processes. The updated content is now available on the planning and land authority website.

- 20. 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.**

Government Response: Agreed

The authority will review current information on its website and prepare or update supporting fact sheets to further assist the community.

Work being undertaken as part of the ACT Planning System Review and Reform project recommends planning practice notes and other guidance on the DA process to aid a proponent's understanding of the planning system and the associated processes. The development of simple guides that explain when development approval is required and how the development assessment process works is also recommended.

The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

The appropriate location and links to these documents will be considered during the Review project.

- 21. The Committee recommends that the Directorate develop a fact sheet that provides 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.**

Government Response: Agreed

Each Territory Plan Code contains information about the Code structure, assessment tracks, hierarchy of plans and defined terms.

The authority will review current information on its website and prepare or update supporting fact sheets to further assist the community.

- 22. 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.**

Government Response: Agreed

The authority will review current information on its website and prepare or update supporting fact sheets to further assist the community.

- 23. 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.**

Government Response: Agreed

The authority has recently reviewed the administrative information provided with Notices of Decision which details appeal processes and next steps to ensure it is accessible and easily understood.

The authority will review current information on its website and prepare or update supporting fact sheets to further assist the community.

- 24. 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.**

Government Response: Agreed

Information about the interaction between heritage matters and DAs is currently available on the Build, Buy, Renovate website at <https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/before-you-start/heritage>. The authority will continue to review current information on its website and prepare or update supporting fact sheets to further assist the community.

- 25. 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.**

Government Response: Agreed

Information about making a complaint and resolving disputes is currently available on the Build, Buy, Renovate website at <https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints/making-a-complaint>. The authority will continue to review current information on its website and prepare or update supporting fact sheets to further assist the community.

Access Canberra undertakes planning compliance activity on behalf of the planning and land authority.

- 26. 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.**

Government Response: Agreed in principle

The current naming convention for DA files has been developed in response to the extensive documentation that is required for submission. For ease of access and delineation, plans and files are generally split into their individual pages and labelled accordingly with their title. Naming conventions typically copy the title of the document itself, or otherwise a standardised place holder.

The authority will investigate whether a supporting fact sheet could be prepared that will assist the reader to understand the nature and purpose of each plan.

- 27. 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.**

Government Response: Agreed in principle

As part of the DA Finder App upgrade currently underway, the authority is exploring ways to keep DA information available for five years.

There are several options being explored, with database, information technology and funding issues to be considered.

- 28. 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.**

Government Response: Agreed in principle

As part of the DA Finder App upgrade currently underway, the authority is exploring ways to keep DA information available for five years.

There are several options being explored, with database, information technology and funding issues to be considered.

- 29. 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.**

Government Response: Agreed

Under Part 3.6 of the Act, the authority is required to maintain a public register and associated documents available for public viewing. Section 28(1)(a)(vii) of the Act details that if any representations have been received in relation to an application, and not withdrawn, they are to be included on the public register. This information is available on request from EPSDD Customer Services via email, phone or visiting the Dickson shopfront.

- 30. 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.**

Government Response: Agreed

Under current DA assessment processes, the completeness check process already reviews and identifies the appropriate track for a DA. If the track cannot be determined, further information is requested until such time as it can be established.

- 31. 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.**

Government Response: Agreed

It is a current process of the authority that an application that is determined to be in the incorrect track after having been lodged is to be withdrawn or it will be refused by the authority under section 114 of the Act.

A new DA application lodged in the correct track is then required. The new application is then treated as a new assessment process requiring another completeness check and public notification.

- 32. 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.**

Government Response: Agreed

Where the impact of a proposal is uncertain, further information is requested to determine the appropriate assessment track. Where an impact is not yet determined, the planning and land authority will require the application to be based on a worst-case scenario assessment and assessed in the appropriate track.

In the event that the appropriate assessment track changes based on information received during the assessment process, the application must be withdrawn by the applicant or refused by the authority, with a subsequent application lodged in the correct track.

- 33. 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.**

Government Response: Not agreed

Not all lease variation DAs are associated with a design and siting element. There are many types of lease variation only DAs, such as consolidation, subdivision or adding a use to a lease after a design and siting DA approval has been issued. Many lease variation application types focus on amending minor elements of a Crown lease such as increasing the gross floor area, removing covenants etc.

For a lease variation only DA, the authority requires indicative plans to be lodged to support the lease variation application and show how the land is suitable for the proposed use.

While some lease variation applications could be incorporated with an accompanying design and siting DA, it is not always feasible or necessary to achieve this.

Therefore, there is no overriding rationale to justify this change.

- 34. 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.**

Government Response: Agreed in principle

It is very difficult to determine whether an application contains false or misleading information before a full assessment is undertaken.

Under the Act, applications are made to the authority and assessed on their merits and on the information provided with the application. If during the assessment of an application there is a lack of clarity or detail about a proposal, further information will be requested.

It may sometimes only become apparent that a development application was false or misleading once construction commences, and the Act already addresses this situation. If a development takes place which is not consistent with the development approval, the proponent commits an offence under section 199 of the Act by undertaking development without approval.

Also, under section 189 of the Act, the authority has the ability to revoke a development approval if satisfied the approval was obtained by fraud or misrepresentation.

The ACT Government considers that these provisions provide sufficient capability to deal with potential fraud and misrepresentation.

- 35. 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.**

Government Response: Agreed in principle

The authority will review current information on its website and prepare or update supporting fact sheets to further assist industry with understanding the required documentation for DAs.

The completeness check stage is an important component of the DA process and ensures all required information is provided to allow for assessment of the proposal and public scrutiny. The authority regularly engages with industry on matters such as this.

While the authority agrees that the consistently high failure rate is not desirable, there are also many people engaging with the planning process for the first time who need assistance through the process.

- 36. 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.**

Government Response: Agreed in principle

The authority will review its completeness check process to ensure key elements are required and these are checked to ensure they are provided and correct.

Other elements, such as a plot ratio calculation, are matters which are considered during the detailed assessment of the application.

The completeness check process is an important administrative check to ensure that all relevant documents are provided. It is also important to be undertaken in a timely manner and not become a preliminary assessment of the application against Territory Plan requirements.

- 37. 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.**

Government Response: Agreed in principle

The authority agrees in principle that it is important for readers to understand that the documents which are publicly notified have been provided by the applicant and are in no way endorsed by the authority.

However, the proposed method of adding a note to each plan will require a manual update to every page of every document submitted with a DA to be effective. This is an unreasonable administrative burden.

The authority considers that a similar outcome could be achieved by placing a disclaimer on the notification website next to the downloadable plans.

A note can also be added which details how a community member can notify the authority should any errors in the documentation be identified.

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

Government Response: Agreed in principle

All staff in customer service roles are provided with on the job training and formal training opportunities as required.

The ACT Government regularly receives feedback about the high level of customer service which is provided by these teams.

- 39. The Committee recommends that the Directorate expedite the update of the e-Development portal.**

Government Response: Noted

The ACT Government is considering options in relation to the best product to deliver an update to the eDevelopment portal.

- 40. The Committee recommends that the Directorate consider incorporating ‘real time’ tracking, contact and feedback elements into e-Development.**

Government Response: Agreed in principle

The ACT Government is considering options in relation to the best product to deliver an update to the eDevelopment portal.

- 41. 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.**

Government Response: Agreed

Under Part 3.6 of the Act, the authority is required to maintain a public register and associated documents available for public viewing. Section 30(1)(l) of the Act requires entity referral advice to be made publicly available as an associated document to the public register. This information is available on request from EPSDD Customer Services via email, phone or visiting the Dickson shopfront.

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

Government Response: Noted

The necessity for a site visit is determined on a case-by-case basis and the issues raised by the assessment of a development proposal. The authority has access to regularly updated aerial imagery on the ACTmapi website, which aids the assessment of applications.

The fact a representation is received on an application is not determinative of raising an issue which will benefit from a site visit. Where the authority’s assessment, or a representation, raises an issue which requires a site visit, it will be undertaken by the authority. This is considered to be more efficient use of resources commensurate with the issues raised by an application.

- 43. 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.**

Government Response: Noted

Proactive compliance activities are led by data, and relevant agencies work collaboratively to achieve compliant outcomes with respect to site management. Access Canberra responds to complaints about compliance matters on behalf of the planning and land authority.

- 44. 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.**

Government Response: Agreed in principle

Under the minimum documentation requirements, an applicant is required to provide plans which identify the movement of vehicles, storage of construction materials and site protection from such activities. For larger developments in established residential areas or around local and group centres, a construction period parking plan is often required as a condition of the approval.

This information is publicly available on request from EPSDD Customer Services via email, phone or visiting the Dickson shopfront.

As part of the DA Finder App upgrade currently underway, the authority is exploring ways to keep DA information available on the website for five years.

There are several options being explored, with database, information technology and funding issues to be considered.

- 45. 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.**

Government Response: Agreed in principle

Under the current assessment process, most DAs are required to include documentation that details the verge protection measures in accordance with authority and Transport Canberra and City Services requirements. This documentation often includes temporary fencing plans and documented points for the protection of the verge and street trees. It is a requirement of any development that the verge be protected, as the land is released it cannot be built upon or altered in anyway without approval from the land custodian.

This information is publicly available on request from EPSDD Customer Services via email, phone or visiting the Dickson shopfront.

As part of the DA Finder App upgrade currently underway, the authority is exploring ways to keep DA information available on the website for five years.

There are several options being explored, with database, information technology and funding issues to be considered.

- 46. 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.**

Government Response: Noted

This recommendation will require changes to the Act. Any changes to the provisions of the Act will be considered as part of the broader ACT Planning System Review and Reform project currently underway.

The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

- 47. 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.**

Government Response: Noted

The ACT Government agrees that the development assessment function requires appropriate funding to support development activity within the ACT and meet the needs of the community.

The ACT Government provided funding for six new development assessment positions in the 2019-20 budget. Since these positions were filled, development assessment performance has significantly improved, with a return towards consistently meeting statutory timeframes expected in the coming months. More recently, EPSDD has reallocated staff to the development assessment team to meet short-term demand.

- 48. 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.**

Government Response: Not agreed

Very few retrospective DAs are the result of an applicant's deliberate actions to undertake work without approval. A retrospective DA is assessed against the Territory Plan, and the development as constructed may require modification to bring it into compliance with Territory Plan requirements.

While charging a higher fee may add another disincentive to unapproved development, it will also act as a barrier to having an application lodged for assessment for that development. This will have the perverse outcome of keeping unapproved developments out of the development assessment system and may lead to other negative consequences, such as safety and insurance implications. At all times, the planning and land authority supports a system that encourages applicants to support applications for development approval where they are required.

On balance, it is counter-productive to impose a higher fee for retrospective DAs.

49. 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.

Government Response: Agreed

The ACT Government recognises this importance of and supports third-party appeals on planning matters. There are some exclusions to the third-party appeal rights as the system seeks to balance the rights of lessees to develop their blocks with the right for community comment and oversight of decision-making.

The current approach strikes an appropriate balance.

50. 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.

Government Response: Noted

Where a representation has been made on a DA, a decision to approve the DA does not take effect until the period has ended.

During this time, any development activity could be considered to be being undertaken without approval. Each occasion where this is the case should be investigated on its merits and appropriate compliance action taken by Access Canberra. Access Canberra undertakes planning compliance activity on behalf of the planning and land authority.

- 51. 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.**

Government Response: Agreed in principle

EPSDD will engage with the ACAT to explore ways to improve linkages between Tribunal decisions on planning matters and other processes and the authority website.

- 52. 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.**

Government Response: Not agreed

Whilst the authority supports the mediation process and recognises this as an important opportunity for an appellant to engage with the developer on fundamental issues, it is not clear how this would add value to the process. Further, decisions made by the authority and ACAT are done so against compliance with the Territory Plan and it is unclear how a design-led mediation option will reflect planning compliance if established outside of the ACAT process.

- 53. 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.**

Government Response: Agreed in principle

EPSDD places the highest value on integrity in its decision-making processes, including actual or potential conflicts of interest. The authority has an integrity plan and conflict of interest policy to manage any conflicts which may arise. The authority is not aware of any breaches of this policy or any conflict of interest issues affecting its assessment of DAs and environmental impact assessment processes.

Where a perceived or actual conflict arises which cannot be managed, and the work cannot be performed by other staff, the authority would look to engage independent experts.

Under the Act, the authority refers applications to other government agencies for their expert review and comment, including the Conservator of Flora and Fauna, the Environment Protection Authority, ACT Health Protection Service, among others.

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

Government Response: Noted

The ACT Government is considering options in relation to the best product to deliver an update to the eDevelopment portal and will consider how this recommendation can be incorporated.

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

Government Response: Agreed in principle

The ACT Planning System Review and Reform project contemplates changes relating to DA processes to clarify the hierarchy of decision-making considerations. This can include the process for considering registered and regulated trees during the assessment of a DA.

The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

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

Government Response: Agreed in Principle

Anticipated Better Infrastructure Fund funding allocation in 2020-21 for improvements to the existing Heritage Register database will improve the delivery capacity of heritage information, enabling the Government to better facilitate service delivery in the Territory. This project will include better integration with online search capacity. In addition to the ACT Heritage Register, ACTMapi includes a searchable heritage layer.

- 57. 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.**

Government Response: Agreed in Principle

As the Heritage Council continues to add places to the ACT Heritage Register the demand for *Heritage Act 2004* advice and approvals on applications and referrals continues to increase annually.

Additional resourcing of one ASO6 FTE was introduced to ACT Heritage in 2019/20, however the ACT Government recognises the continued and sustained growing demand for Council advice and approvals on *Heritage Act 2004* applications and referrals since the introduction of revised legislation in 2014. The Government is committed to ensuring the Heritage Council and ACT Heritage is adequately resourced to meet statutory obligations and timeframes.

The ACT Government also demonstrates commitment to meeting statutory obligations and timeframes by having a range of Heritage Council functions delegated to the Secretary (Senior Director, ACT Heritage).

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

Government Response: Agreed in principle

Work being undertaken as part of the ACT Planning System Review and Reform project contemplates changes relating to DA processes to clarify the hierarchy of decision-making considerations. This can include the process for considering heritage matters during the assessment of a DA.

The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

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

Government Response: Agreed in principle

Pre-application consultation with ACT Heritage currently occurs if requested by the applicant or the Directorate is aware of heritage considerations. Requiring such consultation would allow for early identification of heritage requirements and would lead to improved heritage conservation outcomes; which could be achieved within existing resources.

There are also often associated Heritage approvals required which brings a development with heritage considerations to the attention of ACT Heritage.

- 60. 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.**

Government Response: Agreed in principle

The NCDRP includes relevant heritage expertise when providing advice on development proposals that relate to heritage issues, either through panel membership or through the provision of heritage advice from ACT Heritage to the panel for their consideration.

- 61. 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.**

Government Response: Noted

- 62. 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.**

Government Response: Noted

Access Canberra has existing measures to ensure complainants are advised at critical points throughout the investigation on the progress of their complaint. Processes are currently being reviewed. Updates about a complaint must be balanced against the requirements of the *Information Privacy Act 2014* as it relates to disclosure of information about individuals.

- 63. 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.**

Government Response: Noted

During the course of this inquiry the ACT Government has funded additional resources for building compliance activities. This included new positions to establish a Rapid Regulatory Response Team (RRRT). This team currently has 8 FTE. The role of the RRRT is to undertake preliminary assessments of complaints and attend the relevant site within five working days of receiving a complaint. This increases the level of customer service provided to complainants.

- 64. 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.**

Government Response: Agreed in principle

Work being undertaken as part of the ACT Planning System Review and Reform project will consider DA tracks to ensure clear assessment pathways that have regard to the scale and complexity of proposals. The review also investigates the ability to assess a DA on its merits and the overall outcome of the development and not just on its compliance against minimum standards.

The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

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

Government Response: Agreed in principle

Work being undertaken as part of the ACT Planning System Review and Reform project will investigate the ability to assess a DA on its merits and the overall outcome of the development. The role of simple rules versus flexible criteria will be considered as part of the review process. The introduction of clearer DA assessment processes could consider the role of rules versus criteria for different types of applications such as those of relatively minor scale and complexity, standard applications and more complex proposals.

The Planning Review project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;

- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

- 66. 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 refreshes and zone objectives.**

Government Response: Agreed in principle

The ACT Planning System Review and Reform project is reviewing the planning system in a holistic and strategic way, with the broad aims of:

- simplifying the planning system;
- improving the balance between certainty and flexibility in the system; and
- incorporating character, context and design as key elements of the system.

The review is progressing in 2020, with potential legislative changes to be considered in 2021.

The Planning Review project identifies the need to clearly define the hierarchy of elements in the planning system, their respective role and purpose in delivering the desired outcomes for the city. This will reduce duplication or risk of conflict between components and enables community to better understand how strategic directions may be enforced through the planning process.

The Planning Review project will also clarify the role and purpose of each zone and code to improve the line of sight between development controls and the strategic directions and assist in the understanding of why those controls have been adopted and what they seek to achieve.