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

**GOVERNMENT SUBMISSION
TO STANDING COMMITTEE ON PUBLIC ACCOUNTS INQUIRY**

**AUDITOR GENERAL'S REPORT No. 4 -
"DEVELOPMENT APPLICATION AND APPROVAL SYSTEM FOR
HIGH DENSITY RESIDENTIAL AND COMMERCIAL
DEVELOPMENTS"**

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**Government Submission to the Standing Committee
on Public Accounts Inquiry
Auditor-General Report No. 4 of 2012 –
Development Application and Approval System for High Density and
Commercial Developments**

Response to Recommendations

Recommendation 1

In the management of high density residential and commercial developments, the Environment and Sustainable Development Directorate should improve its efforts with respect to a 'One Government' approach to development applications by:

- a) *Fostering the development of a regulation to cover the referral process which explicitly defines the:*
 - *Roles and responsibilities of the Directorate and each of the ACT referral entities;*
 - *Stating the timeframes for referrals and receiving advice;*
 - *Standards for the quality and presentation of the advice;*
 - *Accountability and performance reporting requirements; and*
 - *Escalation and dispute resolution mechanisms.*
- b) *Reviewing arrangements for meeting National Capital Plan requirements, this may include developing:*
 - *A protocol between the Directorate and the National Capital Authority that clarifies interagency referral and consultation processes from application to built form;*
 - *An internal assessment template for the Directorate's Case Officers with specific criteria to ensure compliance with the National Capital Plan; and*
 - *A regular reporting regime whereby information is exchanged between the Directorate and the National Capital Authority on development applications that are being progressed.*

Government's response: Agreed in part.

A 'one Government' approach has been at the heart of administrative reforms this Government has implemented, particularly following the structural changes made after the publishing of its 2011 Review 'Governing the City State'. In that context, the Government agrees fully with the underlying theme of this recommendation.

Entity referrals

The Environment and Sustainable Development Directorate (ESDD) exemplifies that one-government approach, having brought together environment, transport and land use planning and regulation in one body. For development applications (DAs), this has enabled a stronger focus on ensuring appropriate, relevant and timely whole-of-government advice is given to developers prior to applications being submitted with a view to removing the need for ongoing amendments and revisions to DAs once they are in the application system. Pre-application processes see all relevant Government and other bodies providing advice to developers on individual proposals across the spectrum of planning and policy issues, including design and siting, electricity and water provision and use, heritage, traffic and transport, tree management and environmental matters.

This service is supported by legislated, streamlined and standardised assessment processes that have been developed in response to industry and community requests to provide greater consistency and clarity in the management of DAs. Those processes are also consistent with national approaches agreed through the Council of Australian Governments to reduce administrative burdens and the 'red tape' surrounding land development.

The extent to which proponents accept and implement the pre-application advice does, and will continue to, vary; where the pre-application advice is taken, referrals to Government agencies during assessment are considerably more efficient than where the advice is not. It is fair to say that where there continues to be differences between Directorates' advice and a proposal under assessment, administrative procedures don't always efficiently support early or simple resolution of those issues.

Consistent with the approach that minimises red tape, the Government's immediate response is that an amended regulation to establish templates, forms and standards for presentation of agency advice may not produce the outcomes sought. The ESDD will review its documentation and processes in light of the Auditor-General's report to identify administrative mechanisms that can assist the better and easier provision of information between Directorates, with a view to establishing the value of a regulation as proposed.

As always, the Government prefers to work with the development community and the construction industry, and to look across its own operations to ensure that a one-government approach is maximised. Some areas of focus for improvement could include: ensuring pre-application meetings are arranged to maximise attendance and input by all relevant Directorates and bodies; delivering consistency in agency advice across development proposals; and ensuring that agency advice once given, does not change where the proposal does not change.

National Capital Authority

The Government agrees that clarity around the Directorate's interaction with the National Capital Authority (NCA) in relation to DAs can be improved and will work with the NCA to develop the most appropriate means to ensure consistency with its legislative obligations.

It is worth noting, however, a key policy issues underlying this recommendation. By law, the ACT's Territory Plan made under the *Planning and Development Act 2007* (the Act) cannot be inconsistent with the National Capital Plan and thorough consultation with the NCA during its development (and subsequent amendments) ensures that this is so. Assessments carried out and decisions made using the Territory Plan cannot, therefore, be inconsistent with the National Capital Plan and the Government notes that the Auditor-General's report does not provide evidence of inconsistent decisions. Only a very small proportion of DAs assessed by the Directorate are required by legislation to be referred to the NCA (in 2010-11, only six percent of DAs were so referred); none of the DAs the Auditor-General reviewed required referral.

The report does highlight two key areas for the Directorate to work with the NCA on: consistency in what is referred to the NCA by the Directorate; and the quality of advice received from the NCA. The issue of consistency will be included as part of the Directorate's review of pre-application and referral processes already mentioned, however it is important to stress that those referrals need to add value to the assessment process. Where, as noted by the Auditor-General, the NCA provides standard responses that simply require consistency with relevant NCA Development Control Plans, the Government can see value in an agreed mechanism that ensures that appropriate assessments of development proposals are carried out by both agencies.

Recommendation 2

The quality and timeliness of entity advice provided to the Environment and Sustainable Development Directorate should be improved by the Directorate:

- *Developing templates which clearly and succinctly facilitate the separate recording of a referral entity's approval, conditions, general advice and conclusion in relation to the development proposal. All referral entities should be required to use these templates;*
- *Requesting referral entities to develop core conditions to be used by referral entities in the assessment of development applications for high density residential and commercial developments;*
- *Providing guidance to key referral entity staff to communicate expectations on the quality and timeliness of entity advice;*
- *Requiring that formal referral entity advice undergo quality assurance by the relevant entity team leader or Manager (or equivalent) prior to being provided to the Directorate, with evidence of this quality assurance documented in the response template; and*
- *Further consulting with those referral entities who do not support a development application or whose conditions are not proposed to be included in the Notice of Decision by:*
 - *A draft Notice of Decision being sent to the referral entity for review and comment; or/and*
 - *The referral entity being invited to attend the Major Projects Review Group when the application is considered.*
- *The pre-application process for high density residential and commercial developments should be strengthened by the Environment and Sustainable Development Directorate fostering the attendance of all relevant referral entities at pre-application meetings and circulating notes from such meetings to these entities. (This could be achieved through implementing Recommendation 1 a).*

Government response: Agreed in part.

As outlined in the response to Recommendation 1, the Government agrees that better and more streamlined outcomes can be achieved for both developers and Directorates by focussing on and improving the pre-application process that is currently in place. The importance of a clear understanding of issues, requirements and possible delay-points by all involved in the development application process will be the key to resolving many of the timeliness and transparency issues identified in the Report.

The benefits of early and clear advice through the pre-application process can be supported by agreed documentation, including standard templates and conditions where necessary. The review of processes outlined in the response to Recommendation 1 can incorporate this. Enhancements already underway to the Government's eDevelopment system that are due to be implemented later in 2012 will provide enhanced referral tracking and management systems that will respond to issues raised by the Auditor-General.

In terms of advice received from referral entities, the Government notes that a number of agencies already have core conditions that are regularly imposed on decisions for high density and commercial developments as needed. It is important to note, however, that the DAs under consideration by the Auditor General in this report are, by nature, more complex and non-standard proposals, not always lending themselves to the imposition of standard conditions. Again, the Government would stress the importance and value of pre-application processes for advice, rather than mandating the use of agency resources in quality assurance processes to resolve advice issues. The value of pre-application processes is that development specific – and often creative and more

site-specific solutions – can be devised together with the applicant, rather than imposing what could be perceived as ‘bureaucratic’, standardised responses.

The Government does not agree with the recommendation to add a second layer of consultation with referral entities prior to a decision being issued. It should be stated clearly that the Directorate’s actions in releasing decisions following consideration of referral entities’ advice as part of the assessment process is fully consistent with existing provisions of the *Planning and Development Act 2007* (section 120). Under current practices, any referral agency that is required to provide advice on a DA is invited to pre-application discussions to provide advice to developers. They then have a formal opportunity to provide advice once the DA is lodged. The Government believes that adding a new and additional bureaucratic process that could effectively ‘open up’ referral entity advice for further consideration would be counter-productive, adding pressures to achieve more within statutory timeframes.

Recommendation 3

The quality of accountability indicators related to high density residential and commercial development applications that are reported on by the Directorate should be improved by:

- *Quantitative external accountability indicators being reviewed and targets set that are realistic rather than aspirational; and*
- *Specific internal quantitative and qualitative accountability indicators for high density residential and commercial developments being reported separately.*

Government response: Agreed in part.

The Government has worked closely with the development industry and the broader community to implement clear and streamlined development assessment processes under the *Planning and Development Act 2007* (the Act). Strong improvements in the development application system and in the service delivery culture of the planning and land authority since the legislation came into effect in 2008 are widely recognised in the community and across the development industry. The Government believes there is a strong commitment within the Environment and Sustainable Development Directorate to continue to improve delivery of outcomes for the community and for the broader industry.

The Act currently provides decision timeframes for applications within assessment tracks, rather than by the content of the proposal. The Territory Plan supports this structure by acknowledging the increasing levels of complexity of types of development in each assessment track. The applications reviewed by the Auditor General are some of the most complex and least 'standard' of applications, often presenting a range of competing issues that must be balanced to reach a decision. Those complexities often cannot easily be resolved within legislative timeframes.

The Directorate's published performance indicators of 75% of merit track applications being decided within statutory timeframes clearly reflects the complexity of issues that merit track applications can bring and the generally higher level of community interest in the proposals.

Very often, delays in DA decisions arise because issues have not been fully resolved by the applicant at the time of application and the Directorate must request additional information to enable a full assessment to occur, or an applicant amends an application to address unresolved issues. Data from the Directorate indicates that at any given time, between 40 and 50 percent of 'over time' applications are delayed as a result of these issues.

The Directorate has the legislative power to refuse an application where it does not have sufficient information to assess a proposal. Instead it makes a clear choice to work with developers and proponents to achieve a better development outcome; this means that complex DAs will often go beyond legislated assessment timeframes. In reality, and as noted by the Auditor General, the current legislated timeframes do not reflect the complexity of these DAs, but they do reflect industry demands for shorter assessment timeframes and standard assessment processes. For them to work, they need to be backed up with comprehensively prepared development applications that enable those timeframes to be met.

The Government can review the relevance of current assessment timeframes for merit and impact track assessment, including consultation with industry and the wider community, with a view to amending the Act to provide more realistic assessment timeframes. Initially, however, the Government believes that a stronger focus on the pre-application processes will work to address assessment times through effective 'one Government' mechanisms.

In relation to internal accountability indicators, the Government makes the point that for the 2010-11 financial year the DAs reviewed by the Auditor General made up approximately three percent of the Directorate's total assessment workload for the year (1302 applications). The value of establishing separate internal indicators and monitoring regimes for a small subset of the Directorate's activities will need to be considered against transparency imperatives the Act establishes and the Directorate's overall resource allocations.

The Directorate has a number of internal processes that manage the complexities these applications bring. Early identification of complex applications ensures they are managed by the Directorate's most experienced officers, whose workload is managed to enable a strong focus on those applications. The Major Projects Review Group addresses issues around the quality of developments, while the Executive Policy Committee is used to resolve policy complexities that arise. Regular and 'as needed' meetings occur between all assessment officers and their supervisors, with Development Managers meeting at least weekly with senior executives to ensure paths are found to resolve issues where required.

Recommendation 4

The Environment and Sustainable Development Directorate should improve its performance by reviewing Case Officers' work practices to identify processes that would allow for the continuous active assessment of high density residential and commercial development applications.

Government response: Agreed.

Consistent with the Government's legislated approach to streamline and provide clarity around development assessment processes, the Directorate has developed detailed work and operating procedures that are used by Case Officers in their roles. Those procedures recognise the statutory timeframes that must be applied while providing a level of consistency in assessment practices across the relevant Division.

While these complex applications form a small proportion of the development application workload of the Directorate, they are allocated to Case Officers based on officers' skill and experience levels. To support this, management practices across the Division ensure the caseload of officers assessing those applications supports an appropriate focus on their completion. Those practices also build overall skill levels through the mentoring by senior officers of more junior staff through assessment of more complex applications. Additionally, all officers have regular and 'as needed' contact with supervisors, senior managers and executive to resolve particular issues as they arise.

Expected enhancements to the eDevelopment system anticipated later in 2012 will bring a range of administrative, service delivery and data enhancements. The Government agrees this will provide a key opportunity for the Directorate to review its work practices to ensure responsive management of all development applications.

Recommendation 5

The Environment and Sustainable Development Directorate should improve its governance arrangements by:

- a) reviewing the Major Projects Review Group and Executive Policy Committee, including:
 - defining their objective, scope, membership and administrative roles and responsibilities, including administrative rules over the timeframes for committee decision-making and the management of critical or significant referrals;
 - establishing mechanisms to provide timely input and engagement in the earlier stages of the development application approval process;
 - considering expanding their membership for high density residential and commercial developments to include people external to the Directorate, for example the Territory's Architect, chair of the Heritage Council and the Commissioner for Sustainability and the Environment; and
 - assessing the benefits of establishing a Planning and Development Forum to provide advice to the Executive Policy Group on systemic issues and policy lessons.*
- b) The Directorate's annual internal audit program including development application and approval processes.*

Government response: Agreed.

The Government is advised that the Directorate has begun work to review both the scope and operation of both the Major Projects Review Group and the Executive Policy Committee to enable better and more strategic use to be made of them. That review is considering the issues raised by the Auditor General and particularly the benefits of, and possible mechanisms for, incorporating advice from sectors beyond the Directorate itself.

The Directorate will also look at its internal audit program for opportunities to incorporate a review of development application and approval processes as appropriate.

Recommendation 6

The Environment and Sustainable Development Directorate should further progress its efforts to advance environmental sustainability and enhance urban design outcomes by reviewing policy and developing a guideline to provide greater guidance to developers, Case Officers and referral entities on how to implement ecologically sustainable and urban design principles into the development application process for high density residential and commercial developments.

Government response: Agreed.

While the Territory Plan sets a high-level framework for the integration of environmental sustainability and urban design into planning outcomes for the Territory, the Directorate has acknowledged that there is a gap between that high level framework and its application in development assessment processes. That gap could usefully be filled by clear policy that sets standards for these matters.

Some early thinking on these matters has been carried out by the Directorate and it will be progressed over the coming period. The Government believes, however that environmental sustainability and urban design outcomes are not achieved solely through development application decisions and it has provided a strong and integrated strategic environmental response across a range of areas: *Action Plan 2*; energy efficiency legislation and solar feed in initiatives; *Transport for Canberra*, a new *ACT Planning Strategy* and a revised waste management strategy that will be available for public consultation later in 2012.

It will be important for any resulting sustainability and design policies to incorporate the 'one Government' approach that would support referral entities appropriately incorporating similar considerations in their advice and input into development applications.