LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL
Ms Caroline Le Couteur MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair)
Ms Tara Cheyne MLA, Mr James Milligan MLA, Mr Mark Parton MLA

Submission Cover Sheet

Engagement with Development Application Processes in the ACT

Submission Number: 049 - Property Council of Australia

Date Authorised for Publication: 8 August 2018

Property Council of Australia
ABN 13 00847 4422

Level 4, 10 Moore Street
Canberra ACT 2600

T. + 61 2 6276 3601
E. act@propertycouncil.com.au

propertycouncil.com.au
@propertycouncil

Australia's property industry
Creating for Generations

The Committee Secretary
Standing Committee on Planning and Urban Renewal
Legislative Assembly for the ACT,
GPO Box 1020,
CANBERRA ACT 2601

Inquiry into Engagement with Development Application Processes in the ACT

Response provided by the ACT Division of the Property Council of Australia

Dear Sir/ Madam

Thank you for the opportunity to provide comments and feedback on the *"Inquiry into Engagement with the Development Application Processes in the ACT".*

The ACT Property sector is the second biggest industry in Canberra – behind the public and health services – employing 1 in 7 Canberrans – driving economic growth and renewal across our city. Our sector is critical to the diversity of the economy and contribute 57.5% of all government revenue which funds our schools, hospitals, municipal, community and government services. Our contribution to renewing our city at a time of transformation and growth is immense.

Many of our members work on a daily basis with the Government and are often the primary drivers of innovative development across the city.

Our members' projects include residential, mixed use, commercial, educational, community and retail developments, ranging from single buildings, multi-residential sites, local shops, apartments, commercial and industrial buildings to whole suburbs. Our members comprise many built environment professionals including developers, financers, architects, property law specialists, engineers, town planners, environmental and heritage consultants, universities and government agencies, at both the Federal and Territory level, and local utilities.

Our advocacy priorities include:

- **Encouraging urban renewal** that is vital to the future of Canberra's economic and social wellbeing.
- **Advocating planning and sustainable development polices** which are outcomes focused.
- **Promoting transport orientated development** that delivers density and liveability in the major transport corridors and in our town centres.
- **Providing housing choice for all Canberrans** including retirement living and affordable housing.
- **Advocating for taxes and charges which are fair**, administered efficiently and encourage development where it is needed.

- **Participating in long term infrastructure planning** which will help transform our city.

It is with these priorities in mind that we provide the following response to the Development Assessment Inquiry. The Property Council acknowledges that the Environment, Planning and Sustainable Development Directorate (EPSDD) continues to review its processes and clarity around information required for the Development Applications (DA) processes. Our submission puts forward suggestions toward continual improvement of the system and its assessment processes. We welcome the opportunity to continue this discussion with the Government in greater detail.

Background

The Property Council represents its members are one of the largest groups of users and stakeholders within the development application process within the ACT. We fully support the independent planning approvals and decision-making processes we have in the ACT, and as a whole believe that the EPSDD should be supported and resourced in a way which recognises their significant workload at a time of urban renewal in the city.

The submission below responds to the scope of the Inquiry and these details are outlined below. There are a number of key principles that underpin the submission, being;

- The DA process has a significant impact on property and investment decision making. Delays and uncertainty in planning approval create an economic cost to the community. This has effect on building quality and design. There is a needed for greater certainty when making investment decisions particularly on what can be done and, what needs to be done;
- Industry and the community desire consistency in advice and decision making by the planning authority;
- The DA framework could be better aligned to the ACT Government urban renewal policies and the Minister's 2015 Statement of Planning Intent;
- The DA framework needs to facilitate and outcomes-based approach to planning approvals – which can facilitate and incentivise innovative development - rather than simply ticking boxes but is balanced with certainty.
- The DA system should provide for transparent and equitable outcomes for all parties;
- There is a need to review the current ACAT processes and the impact that this is now having on the design process. The current Territory Plan and Planning framework needs to improve on the design led outcomes but provide assurance of the post assessment processes. ACAT should not be an inequitable mechanism to discourages Industry to seek better design and quality outcomes. Mediation and dispute resolution mechanisms must be timely and focused on outcomes;

- The Planning Framework and built form quality is not limited to development applications and EPSDD. There is a need for greater coordination between government agencies if we are to achieve a truly outcomes focused planning approvals framework; and
- We are hopeful that the Design Review Panel which was funded in the 2018-18 ACT Budget, being led by the ACT Government Architect, will reduce planning approval timeframes, encourage innovation, be outcomes focused, and build trust within the community about the DA processes.

The feedback provided below is a collaboration of comments from members of the Property Council, providing feedback where pertinent.

(1) Community engagement and participation in the Development Application Process:

a) the accessibility and clarity of information on Development Applications and Development Application processes, including Development Application signage; the Development Application finder app; and online resources;

Further review is required to ensure consistency between the details of submission information required and the information required for eDevelopment, the Authorised Forms and the online information guides. There can be some ambiguity between these documents, or lack of understanding of what is required.

b) pre- Development Application consultation and statutory notification processes;

This submission responds to two key points:

(1) pre – DA community consultation; and

(2) pre- consultation with planning and other authority representatives.

In relation to (1), pre-DA community consultation, the Property Council supports the current guidelines and measures required for the proponent to undertake prior for submission of a DA.

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

Notwithstanding the above observation, we have noted that at times the debate about a particular project is somewhat de-railed by debate around Policy decisions rather than the project itself. The Property Council would therefore support changes to the overall approach to consultation, where engagement on Policy is comprehensive and inclusive, with the final Policy

position(s) clearly articulated and widely disseminated. Once a Policy is determined in this manner, Government should then be supportive of projects consistent with Policy. This can be particularly contentious at times when community sentiment does not align with Policy directives. In these instances, strong leadership is critical to ensure our city is able to develop equitably and sustainably.

It is critical that the community understands the meaning of '*permissible*' development, and that the developer is not placed in the position of having to defend what is already allowed – this is particularly important when discussing allowable heights and density. Strong leadership is critical to the overall success of projects, and ultimately delivery of agreed Policy.

The current format of the Territory Plan creates limitations when addressing design-lead outcomes or seeking to resolve criteria-based approach to solutions. At times, the rigidity of the Plan limits the innovation and creativity that Government Policy is seeking to achieve. The Territory Plan in its complexities, overly relies on technical outcomes that can often be in conflict with other policy attributes. The disconnect between the intent of the Plan and delivered outcomes creates friction in the development approval process and delivers sub-optimal outcomes, and therefore presents an opportunity for improvement. Marginalising the debate or compliance on the technical solutions of compliance, both in assessment and ACAT can compromise design outcomes. We believe that a design-lead approvals process would yield the best outcomes for our city.

In regard to <u>(2) pre-Development Application consultation with the Planning and Authority</u> (e.g. Transport Canberra and City Services (TCCS)) teams and other authorities with approval roles, we believe that there would be significant benefit in facilitating early cross-agency consultation, to discuss proposed design ideas and concepts before the more detailed information stage.

At this current time, the pre-application meeting process prior to lodgement of the DA seeks to perform the function of bringing together relevant agencies to discuss development proposals. The failure of the process stems from the level of resolution required in order to facilitate these meetings. It is expected that designs are resolved to a stage that is appropriate for DA lodgement, and therefore design development has already occurred, mostly devoid of Government agency involvement and feedback. In order for this process to provide the desired outcome, the following will need to be considered:

- Ability for applicants to meet before design is available;
- Clear parameters for what the meeting series is to achieve;
- The expected level of engagement from all parties;
- The approach and mindset expected from attending officers;
- Agreement of an appropriate number of meetings that will allow collaborative design resolution; and

- Understanding on the level of design required at each of the meetings.

We believe that in addressing the above issues, it will be possible to create a process that replaces the current singular pre-application meeting, delivering a more beneficial and valuable discussion between all parties. This forum would be of significant benefit where the proponent can present the objectives and key elements of the project and seek valuable feedback that ultimately should decrease the need and timeframes for inter-agency circulation during the statutory process.

The success of such a process will be predicated on a few critical factors, including:

- Timeframe – available appropriate officers to ensure that there are project processes are not significantly delayed because of process;
- Collaborative attitudes from all participants; and
- Clear benefit to all parties involved.

It will be necessary to consider how this process might sit in the context of the existing Design Review Panel, and ACT Government Architect roles. Processes cannot be overly laborious as they will be met with industry resistance.

c) the availability and accessibility of current and historical Development Applications and decisions in relation to Development Applications, including reasons for Development Application approvals, conditions or rejections

In general, there is support for the accessibility of information regarding development approvals and reasons for approvals and rejections. This would provide for informed design of projects on nearby or adjoining lands, and as a general education for all stakeholders in respect of the rationale supporting an approval or refusal.

The Property Council notes however that there could be some improvements in relation to the Development Approval Conditions imposed that would improve clarity for both the applicant and any third party seeking notification of these conditions.

- Standard conditions from the relevant authorities often do not reflect the different complexities or requirements of the individual development application aspects. There have been a number of examples where standard conditions do not reflect the nature or type of development. The applicant is then required to resolve directly with the referring authority to resolve. Planning officers should be provided with sufficient ability to refuse or revise to reflect the context.
- There is a need for consistency of development conditions to provide certainty for both the applicants as well as the wider Canberra community. There was feedback that the range of conditions can often vary between different projects and can include conditions

on matters that are actually not required to be resolved at the development application or a requirement of the Territory Plan.

- In some situations, DA Conditions are required to be satisfied before the building approval takes effect. These can sometimes be unclear and may be improved by clearly specifying these. However, these conditions can often be as result of closing out a referral agency comment that should have been undertaken in the referral (for example, by late endorsement of the referral agency after the required commenting date). This often results in further delays and uncertainty.
- ACTPLA officers need to be empowered and provided with the flexibility and skills to negotiate and make decisions that align the development objectives and Government Policy. At times, this may involve over-riding agency comments, and officers need to feel supported in doing this. Alignment with objectives and outcomes of projects need to be paramount.
- Whilst it is acknowledged that there should be a level of flexibility, this can essentially restart the clock for the referral agencies (each time, adding another 15 days to an approvals process), and reduce the ability of the EPSDD to determine applicability and drive the timeframes. Recent examples include the ability of EPSDD to 'restart the clock' for issues as minor as names appearing inconsistent on a DA. As a result, this approach can cause significant delays in resolving the conditions, ultimately delaying the overall project.
- As a DA Condition can not result in a substantial change, there has been some concern that relatively minor conditions can restrict the commencement of development un-necessarily and consideration should be given to allowing stages of development such as early works, demolition and excavation to commence where not affected by the conditions. This can align with building approval process and will not necessarily result in unapproved or redundant works being undertaken.
- There is industry concern that, at times, conditions are added to permits that do not align with project objectives, nor Government policies. Subjective comments and conditions being added into permits is not a supported approach, and there needs to be clear education and alignment of all officers in all agencies that have responsibility for responding to DA's.

(2) 2) The accessibility and effectiveness of Development Application processes, including:

a) the information provided in relation to the requirements for Development Applications;

As part of the overall Territory Plan and eDevelopment inquiry, there is opportunity to review information required for the Development Applications in regard to current (and future) technology and changes in the way that information is now viewed.

An example of this is the current requirement to produce separate "public notification" floor plans for multi-unit and mixed-use development, with the internal layout removed. Many of the dwelling designs are used for marketing and promotion anyway and therefore it is not necessary to withhold the internal layout of the buildings for public notification. The notification of the floor plans, including the internal layout, would also assist the community to more fully understanding and interpret the proposed development. Use of building information modelling and 3D formats should also be considered to enhance community and stakeholder engagement.

We have also received a number of comments on the restrictiveness of the information required for the DA. Some *land use* definitions can be broad and therefore can have a range of development types. At times, lodgement of a DA can be delayed as there is misalignment between the lodging party and ACTPLA. It is not unheard of for lodgements to be rejected because receiving officers in the Gateway Team believe an incorrect term has been used for the formal *land use*. This does not impact the plans nor proposals but can lead to delay and friction before formal processes have even commenced. We recommend greater flexibility, both in the DA documentation to be lodged for justification, and the capacity for the completeness check officer to determine what DA documentation is required.

b) the current development assessment track system;

The provision of development assessment track system is aimed at providing different 'track' models corresponding with the level of assessment required to make an appropriately informed decision.

The current Code Track is significantly underutilised there remains little development of standardisation within these zones. Development moved from the Merit Track to the Code Track will still be subject to assessment but is more streamlined in regard to the approval process.

Property Council would then encourage the widening of the Merit Track whereby to enable consideration of proposals in Code Track that require a departure from a criterion but where the intent of the criterion is still met. Where the relevant authority is satisfied that a proposal conforms fully with the intent of the criterion, will not cause any significant adverse environmental impacts and achieves high standards of architectural and urban design, it may approve a minor departure from the Criterion. This would have the benefit of reducing the

volume of Merit track DA's and recognised development assessment efficiency where a project is compliant.

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

The Property Council is aware and supportive of the review of the eDevelopment process and platform. It is noted however, that the current system is clunky and prone to failures. The e-Development system struggles to cope with Development Applications that require a large amount of documentation.

In regard to the DA system, there is not enough feedback with respect to the submission of documents or notification of next steps. There is limited opportunity for the applicant to clarify issues quickly and efficiently when there is a point of clarification required for the assessment officer or entity in the interpretation of the plans or submissions.

We suggest that in order for the eDevelopment system to be the most efficient, those receiving the DA's in ACTPLA need to be given the time and resources to be able to focus clearly on documentation, to ensure efficient processes ensue. We suggest this is likely linked to a resourcing issues, predicated on available budgets and Full Time Employee (FTE) availability.

d) processing times for Development Application

The Property Council regularly receives feedback regarding the processing timeframes of the Development Applications and the associated processes, such as completeness check, that can skew the actual time a DA takes to be assessed and approved. It is acknowledged that this is a shared responsibility with industry with respect to responsiveness, however the following is noted:

(1) Completeness Checks and Timeframes – The current completeness check process sits outside of the Development Assessment Process and does not reflect the amount of time in relation to the overall approval. Many delays could be avoided by communication outside of the "rejection track" and seeking clarification direct from the applicant. The completeness check should not form part of the assessment process, and additionally consistency between submissions would also benefit the overall application.

(2) Requests for Information - as with completeness checks, this too could be enhanced by the ability for a conversation between the assessing officer and the applicant regarding questions or clarifications and consistency between applications.

(3) Referral Agency Timeframes – there are a number of instances where delays in referrals results in delays. This is often compounded by the need for the applicant to follow up directly with the referral agency to resolve the matter and status of comments.

f) reconsideration and appeal processes

The current appeals process in the ACT requires significant review in relation to the effectiveness and certainty around process.

It is our view that more time and resources should be devoted to developing, consulting on and adopting the generally agreed policy settings, with full community engagement, so that greater certainty can be provided to both the community and industry.

Where projects are compliant with the outcomes sought by and espoused in documented policy settings, there should be no third-party rights of appeal. While considered contentious, this allows a city to truly develop for its future generations. We recognise that at times community engagement can skew policy and development outcomes that are being pursued to support a population and community not yet present, or able to be consulted with.

Further, we would argue that the risk of a project being taken to third party appeal acts as a very real disincentive to innovative and consider excellent design. Proponents are often unwilling to take the risk of pursuing a contemporary but perhaps "outside the square" solution because of that risk.

The Property Council would like to commence an open discussion with Government, industry and the community as to how design excellence, and initiatives consistent with the Minister's 2015 Statement of Planning Intent, can be pursued with greater certainty for all. We recognise that the Design Review Panel can and should play an instrumental role in this.

The time and cost of appeals is another major issue confronting our members and objectors alike. Many of the ACAT decisions on planning matters take significantly longer than the 120 days prescribed. In addition to the holding costs associated with the land, current ACAT costs have been estimated to regularly cost up to $50,000 and sometime hundreds of thousands of dollars.

The Property Council is supportive of a review process which ensures that there is a fair and equitable process that allows expedient review of the application. In particular we wish to seek a review of the ability for vexatious claims to be progressed – which unnecessarily delay projects for months.

The following key points are raised for consideration:

- As with other jurisdictions, the application fee should be at a level of cost that reflects the complexity and cost of undertaking these reviews. In order to maintain equity for access, the ability to access a legal aid or similar service should be considered;

- Ability to fast track and hold consideration of cases, where the respondent may provide additional fees;

- Provision of additional capability and resources to assist with the application;

- More consistency in decisions taken by ACAT particularly those submission that are vexatious, frivolous proceedings or appellant simply not showing up; and

- Education of the community around the ability to appeal, the permissible uses under the Territory Plan and the likelihood of success in an appeal. The community must understand that delays in approvals caused by unsubstantiated claims result in poorer design and quality outcomes due to the cost involved in such delays.

The process undertaken is only as effective as the framework on which it is based, and there needs to be consideration of the Territory Plan in the way that it deals with the design versus policy reviews.

Together with the appropriate use of the Development Track, the Property Council would be supportive of a system that allowed for the Design Review Panel to be engaged with process allowing a development to be considered on a design and merit-based process. In this process, the Panel would consider both presentations from the community and the applicant and provide a determination which design related matters would be exempt from third party appeals process, unless there is an error in law. As noted above, we would like to commence an open and informed discussion on this matter with Government and the community.

g) Heritage, Tree Protection and Environmental Assessments.

The provision of heritage, tree protection and environmental assessments are an important principle that needs to be considered in development assessment. However, these factors do need to ensure that they are provided with suitable weight to the overall design outcome and not considered in isolation. A number of these types of referrals can have disproportionate consideration for Development Applications.

The nature of these referrals does not generally have statutory timeframes, nor seek heritage advice from ACT Heritage, or heritage consultants early enough in major projects. As such, consideration can take significantly longer than anticipated, provide uncertainty around timeframes and cause reputational damage to any or all involved (e.g. ACT Government, ACT Heritage, the developer).

3) Development Application compliance assessment and enforcement measures.

There is a need to improve the accessibility of early and practical heritage advice to alleviate the perception ‘heritage issues’ as being a difficult factor in the final DA decision making. Major developments and the uncertainty around heritage issues can significantly influence perceptions about political decisions associated with successfully integrating heritage significance and

opportunities. Positive and constructive messaging could be achieved with improved process for timing and early and strategic engagement with ACT Heritage and its Council.

Currently the DA approval power rests with EPSDD, while the ACT Heritage Council has an advisory role. There is a need for parallel, or prior-approval role on DA's by the ACT Heritage Council, particularly for complex and major developments. Therefore, early consultation with ACT Heritage to seek advice should be introduced as a pre-DA requirement.

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

Identifying whether a place, or subject site, is heritage listed, or has identified heritage significance, is very difficult using and navigating the current ACT Heritage Register on the ACT Government Environment, Planning and Sustainable Development Directorate website. The internet interface of the ACT Heritage Register has never been updated.

It would be very helpful for DA proponents to be able to easily gain early information on the heritage status of a place. This is currently hampered by the difficulty of navigating the ACT Heritage Register via the internet interface. For example, there are no simple search fields for street addresses, commonly used names, locations or suburbs. Instead the Block and Section numbers must be known prior to searching for a heritage place and this is counter-intuitive. The Register must be upgraded in the very near future and brought up to the exceptional standards of other Heritage Register's found in other state and territory jurisdictions.

Once again, thank you for the opportunity to provide a submission to the Inquiry. Please do not hesitate to contact me should you require further information.

Yours sincerely

Adina Cirson
ACT Executive Director