



Standing Committee on Planning, Transport and City Services

Inquiry into Planning Bill 2022 **ANSWER TO QUESTION ON NOTICE**

Asked by Jo Clay MLA:

Reference: Hearing on 7 December 2022

In relation to: Governance Structure

- (1) What is the structural relationship between the Territory Planning Authority, the Chief Planner, the Director-General of the Environment, Planning and Sustainable Development Directorate and the Environment, Planning and Sustainable Development Directorate in the Planning Bill?
- (2) Who currently holds the positions of Chief Planner and Director-General of the Environment, Planning and Sustainable Development Directorate?
- (3) In the Planning Bill, several entities and officers provide advice to the Chief Planner or the Territory Planning Authority on key planning decisions. These include the Conservator of Flora and Fauna, the Environment Protection Authority, the Heritage Council and the National Capital Design Review Panel.

For each of the organisations and positions listed above and for any other key organisations and positions that provide advice during the planning process, can you please set out the following information, including relevant sections in the Bill or other legislation.

- a) Which planning decisions do they advise on?
- b) Is this advice intended to be frank and fearless?
- c) Is this advice intended to be independent?
- d) What is their structural relationship with the Chief Planner and the Territory Planning Authority?
- e) What is their structural relationship within or in relation to the Environment, Planning and Sustainable Development Directorate and the Director-General of that organisation?
- f) Does the Chief Planner or the Director-General of the Environment, Planning and Sustainable Development Directorate have any role in appointing, dismissing, directing, tasking or remunerating them? If so, which authority?
- g) Can the Chief Planner make a decision that goes against their advice and if so, what information is made publicly available about that decision and the reasons for it? If that

information is not made publicly available, can you provide the last 2 notices of decision made that did not follow the advice?

(4) The Environment, Planning and Sustainable Development Directorate has an organisational chart on its website: https://www.environment.act.gov.au/data/assets/pdf_file/0003/581727/epsdd-rganisation-structure-20220324.pdf

Can you provide an organisational chart that shows where the Chief Planner and Planning and Land Authority presently sit in relation to this organisational chart, and the role of the Chief Planner and the Territory Planning Authority as proposed in Bill, and/or as proposed in the new planning system?

- (5) Under an outcomes-focussed planning system, is it more important or less important to have frank, fearless and independent advice on planning decisions?
- (6) What new powers does the Chief Planner hold under the Planning Bill (in comparison with the powers currently exercised in the Planning and Development Act 2007) and which sections cover this?
- (7) In the hearing on 7 December, the Committee was advised that 'we have retained largely all of the functions that were in the Planning and Development Act and have just boosted the functions of the Planning and Land Authority.' How have these functions been boosted and which sections cover this?
- (8) The Minister confirmed with the Committee that he had conducted the Planning Review on the basis that he would review the Planning system but that governance arrangements were 'off the table'. Despite this, there is a lot of concern about governance. Of the 65 submissions received by the Committee, 14 raised concerns about transparency, 21 about accountability, 16 about centralised power, 10 wanted more oversight from the Assembly and 4 were concerned about Conservator advice being overridden.
 - a) Why did the ACT Government choose to review the entire planning system except for governance arrangements?
 - b) When was the last review of governance arrangements in ACT Planning conducted?

Mick Gentleman MLA: The answer to the Member's question is as follows:—

- 1) The Territory Planning Authority is established under Part 3.1 of the Planning Bill 2022 (the Bill), and the functions of the Territory Planning Authority are outlined under Part 3.2. Similar provisions exist in the current *Planning and Development Act 2007*.

The Bill provides for the appointment of the Chief Planner as the statutory officeholder who performs the functions of the Territory Planning Authority. The Chief Planner is appointed by the Australian Capital Territory Executive.

The Director-General Environment, Planning and Sustainable Development Directorate (EPSDD) is engaged by the ACT Head of Service under section 31(2) of the *Public Sector Management Act 1994*. The Director-General is responsible for leadership of the Directorate (EPSDD) and leadership in the ACT public service and furthermore answerable to the Minister(s) responsible for the portfolios covered by EPSDD and to the ACT Head of Service.

The approved duty statement of Director-General notes that the occupant is also the Chief Planning Executive and must hold appropriate management experience or expertise to hold that position, as per the *Planning and Development Act 2007*.

- 2) Mr Benjamin Ponton currently holds both positions as Chief Planning Executive (Chief Planner under the Bill - refer to NI2021-170) and the Director-General of EPSDD, consistent with the duty statement for the position of Director-General. This information is publicly available on the EPSDD website and ACT Legislation Register.

- 3) a) The Conservator of Flora and Fauna advises on development applications that propose works that may affect matters contained in the *Nature Conservation Act 2014* and the *Tree Protection Act 2005* and any other matters of environmental significance, for example, EPBC matters.

The Environment Protection Agency advises on development applications that propose works that may affect matters contained in the *Environment Protection Act 1997* and any other related matters that could affect environmental amenity and environmental health.

The ACT Heritage Council advises on development applications that proposes works that may affect matters contained in the *Heritage Act 2004* and sites and artefacts that could be affected.

The National Capital Design Review Panel (NCDRP) is a joint initiative by the ACT Government and the National Capital Authority (NCA) to provide a single city-wide design review panel process before a development application is lodged. The NCDRP also offers an efficient and consistent approach to delivering independent and confidential design advice for development proposals across Canberra. The NCDRP provides advice on development defined as a prescribed development under the *Planning and Development Regulation 2008*, this includes proposed buildings with five or more storeys and proposals to increase the floorspace of a shop by more than 2000m² and that is fully or partly located within a residential zone; a commercial zone; a community facility zone; or a parks and recreation zone. The NCDRP also provides design advice on any development proposal self-referred by a proponent.

The Territory Planning Authority must also refer a development application to an entity prescribed by regulation (a referral entity); or if required by the Territory Plan. This could include various entities and agencies including Transport Canberra and City Services and utility service providers.

The Territory Planning Authority must also refer certain development applications on or adjacent to designated land to the National Capital Authority to seek advice on consistency with the National Capital Plan.

- 3) b) Advice provided by any referral entity is intended and expected to be “frank and fearless” (refer to Sections 8 and 9 of the *Public Sector Management Act 1994*).
- 3) c) Advice provided by any referral entity is intended and expected to be independent (refer to Sections 8 and 9 of the *Public Sector Management Act 1994* and relevant legislation relating to the entity).
- 3) d) Referral entities do not have any structural relationship with the Territory Planning Authority or Chief Planner in current legislation or the Bill.

- 3) e) Administrative support is provided to the Conservator of Flora and Fauna, the ACT Heritage Council, and the NCDRP by staff employed by EPSDD, not the planning and land authority.
- 3) f) The Chief Planner has no role in appointing, dismissing, directing, tasking or remunerating staff employed by EPSDD, or any other entity within the ACT Public Service.

The Director-General is responsible for the strategic leadership of EPSDD and delivering its portfolio responsibilities. In fulfilling this role, the Director-General may from time to time exercise certain powers in appointing, dismissing, directing, tasking or remunerating staff as delegated in legislation (for EPSDD only). The Director-General's powers, roles and responsibilities for recruitment and related matters are established under the *Public Sector Management Act 1994*, Public Sector Management Standards 2016, and ACT Public Sector Enterprise Agreements. These powers have been delegated to various officer levels throughout the directorate. Executive contracts (for example, the Conservator of Flora and Fauna) are administered centrally by the Chief Minister, Treasury and Economic Development Directorate on behalf of the Head of Service, who has responsibility for Executive appointments, suspensions, and terminations (see the *Public Sector Management Act 1994*). Remuneration of Executives is set by the ACT Remuneration Tribunal, not the Director-General.

- 3) g) Yes. Section 187 of the *Planning Bill 2022* and section 119 of the current *Planning and Development Act 2007* provides the circumstances under which a decision that is inconsistent with entity advice can be made. It is the Authority's practice to include a summary of all entity advice received and if considered necessary depending on the nature of the departure, a statement of why the Authority departed from entity advice in the Notice of Decision for a development application. All decisions are published on the Authority's website and are available for public inspection.
- 4) Refer to question 1 above. The EPSDD organisational chart at Attachment A shows the Director-General and Chief Planner as one person. Each role and function is clearly described and separated by legislation. No changes are proposed to the organisational chart as a result of the new planning system, with a change in name from the planning and land authority to the Territory Planning Authority. The organisation chart must be read in conjunction with relevant areas of legislated responsibility.
- 5) In all administrative systems it is important for decision makers to receive frank and fearless advice. This applies to planning systems, whether outcomes focused or more prescriptive. It is always in the government's or decision maker's interest to be made aware of the consequences that a proposed policy or decision may have.
- 6) Section 18 of the Act sets out the functions of the Territory Planning Authority that are exercised and delegated by the Chief Planner. The only additional function of the Chief Planner under the Bill is to promote the strategic planning of the Territory, high-quality design, and good planning outcomes. All other functions are as per the current arrangements for the Chief Planning Executive.
- 7) The functions of the Planning and Land Authority (proposed to be known as the Territory Planning Authority) under the Bill have been expanded to:
 - consider amendments to the Territory Plan initiated by proponents (Section 18(b)). While this is possible under the current legislation, the Bill makes this action more explicit;
 - achieve desired future planning outcomes by advising on planning and land policy, including the broad spatial planning framework for the ACT (Section 18(d));

- promote and implement the ACT Planning Strategy and District Strategies (Section 18(e));
- promote high-quality design and good planning outcomes (Subsection 18(f)); and
- participate in external review process (Section 18(n)).

8) a) Governance arrangements associated with the planning system, similar to most other administrative decision-making systems, are primarily concerned with two metrics, i.e. (1) the statutory decisions made by the Territory Planning Authority, and (2) the performance and accountability indicators/measurements associated with its decisions.

Statutory decisions made within the planning system are currently subject to review in the ACAT and in the ACT Supreme Court. This will continue under the new system, and there is therefore no need to review this arrangement.

Performance and accountability indicators and measurements are annually reviewed as part of the annual reporting processes.

8) b) Performance and accountability indicators and measurements are annually reviewed as part of the annual reporting processes. EPSDD furthermore undertake regular internal reviews of governance procedures around assessment and decision-making processes, with a particular emphasis on integrity and probity.

I have every confidence in the independence and the governance processes of the Authority.

Approved for circulation to the Standing Committee on Planning, Transport and City Services

Signature:



Date: 19/12/2022

By the Minister for Planning and Land Management, Mick Gentleman MLA