

ACT Auditor-General's Office

Performance Audit Report

**Development Application and Approval
System for High Density Residential and
Commercial Developments**

Report No. 4/2012

**Environment and Sustainable Development
Directorate**

June 2012

PA11/13

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled 'Development Application and Approval System for High Density Residential and Commercial Developments' for tabling in the Legislative Assembly pursuant to Section 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Dr Maxine Cooper
Auditor-General
18 June 2012

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LIST OF ABBREVIATIONS

ACAT	ACT Civil and Administrative Appeals Tribunal
ACT	Australian Capital Territory
ACTPLA	ACT Planning and Land Authority
AGO	Auditor-General's Office
DA	Development Application
EPA	Environment Protection Authority
EPC	Executive Policy Committee
ESDD	Environment and Sustainable Development Directorate
KPI	Key Performance Indicator
MPRG	Major Projects Review Group
NCA	National Capital Authority
NOD	Notice of Decision
QA	Quality Assurance
TAMS	Territory and Municipal Services Directorate

1. REPORT SUMMARY AND CONCLUSION

INTRODUCTION

- 1.1 This report presents the results of a performance audit that reviewed the administrative effectiveness of the Environment and Sustainable Development Directorate's delivery of the Australian Capital Territory (ACT) development application and approval system for high density residential and commercial developments.
- 1.2 Jurisdictional planning and development systems by nature are complex as they have multiple legislative and regulatory requirements, need to achieve many objectives, involve an array of Government and non-government entities, need to meet high community expectations and require efficient processes to support industry investment.
- 1.3 The ACT's planning system is particularly complex as it needs to also respect the role of Canberra as the nation's capital. The Australian Government via the National Capital Authority has planning control over specific areas of Canberra, referred to as designated areas. This is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance. Development approval decisions in the ACT must also be consistent with the National Capital Plan, the strategic plan for Canberra and the Territory.
- 1.4 The ACT development application and approval system is administered by the planning and land authority within the Environment and Sustainable Development Directorate (the Directorate), according to the Planning and Development Act 2007, the Planning and Development Regulations 2008 and the Territory Plan. This legislative framework sets the process for deciding a development application, including key requirements for assessment, public notification, entity referrals and decision, as well as the statutory timeframes associated with the development application approval process.
- 1.5 A number of referral entities are also involved in the approval process for development proposals, including referrals made to the Territory and Municipal Services Directorate, Conservator of Flora and Fauna, Environment Protection Authority, National Capital Authority, Heritage ACT and ActewAGL.
- 1.6 The development application assessment process consists of the period from the lodgement of a development application with the Directorate to the Notice of Decision.



- 1.7 There have been 5 high density residential¹ and 170 commercial development applications lodged for approval with the Directorate in the past three financial years. The combined construction value of these development proposals was approximately \$4.8 billion.
- 1.8 The ACT has experienced considerable growth in the number of high density residential and commercial developments over the past decade. These developments represent the majority of large scale and complex developments in the ACT. They attract a high degree of scrutiny from the community, Government and industry due to their size, cost and location, as well the economic and community benefits they offer.
- 1.9 It is expected that the growth in the number of high density residential and commercial developments will continue and intensify particularly as it is consistent with the directions of the ACT Government's Canberra Spatial Plan 2004. Further, the ACT Government's draft ACT Planning Strategy 2011 notes as Strategy 1: Creating opportunities for increased density and dispersed employment by capitalising on the existing structure of the centres and inter-town transport corridors.
- 1.10 The Canberra Spatial Plan 2004 provides the Government's strategic directions for the development of Canberra over the next 30 years and beyond, including having higher density residential developments within existing urban areas as a key initiative.
- 1.11 An efficient and effective development application and approval system is critical to ensure that the expected growth in high density residential and commercial developments is adequately supported, and approved in line with both legislative and policy requirements, as well as the expectations of the ACT Government and community.

BACKGROUND

- 1.12 In 2005, the ACT Auditor-General's Office conducted a performance audit; *Development Application and Approval Process*. It considered the efficiency and effectiveness of the development application and approval process. That audit concluded that there were weaknesses in the development application assessment process and made 22 recommendations to improve the efficiency and effectiveness of the process.
- 1.13 Since this time, there have been considerable planning reforms in the ACT, including new legislation, amendments to the regulatory framework, new planning strategies and priorities, and enhancement of administrative

¹ This figure is based on the definition of 'high density' applied in this audit, being development that include 60 or more dwellings per hectare and/or are generally five or more storeys high.

processes aimed primarily at simplifying processes and improving transparency and consistency.

- 1.14 Despite these reforms, the process continues to attract criticism from various sectors of the community and industry regarding the timeliness and effectiveness of the development application and approval process. These factors have influenced the decision to conduct this audit.

AUDIT OBJECTIVE AND SCOPE

- 1.15 The objective of the audit is to provide an independent opinion to the Legislative Assembly on the administrative effectiveness of the Environment and Sustainable Development Directorate's delivery of the ACT development application and approval system for high density residential and commercial developments.
- 1.16 While planning assessments and decisions are primarily undertaken by the planning and land authority within the Environment and Sustainable Development Directorate, a key element of the approval process is the referral of development proposals to entities for advice. Accordingly, the audit examines inter-agency referral processes including coordination, communication, consultation and decision making.
- 1.17 Given that the Commonwealth Government, through the National Capital Authority has a planning role in the ACT, the relationship between this entity and the Directorate is also considered in this audit.
- 1.18 The audit examined a sample of 25 high density residential and commercial development applications lodged in the 2010-11 financial year. This represents 50% of these types of developments for 2010-11.
- 1.19 For the purposes of this audit, high density residential developments is taken to mean development that includes 60 or more dwellings per hectare and/or is generally five or more storeys high. Under the Territory Plan high density residential is considered to include Residential Zones RZ4 and RZ5.
- 1.20 Commercial relates to those developments classified within the Commercial Zones CZ1 to CZ6, as described in the Territory Plan.
- 1.21 The audit scope does not include the ACT Government's exempt provisions that are outside of the development application process, land release, major ACT Government infrastructure projects or the construction and certification processes involved in building high density residential and commercial developments.
- 1.22 Appendix 1 presents the audit criteria, approach and method.

AUDIT CONCLUSION

1.23 The audit conclusion is set out below.

There has been considerable planning and development reform undertaken by the ACT Government since the 2005 ACT Auditor-General's Office *Development Application and Approval Process* performance audit. Improvements to the underlying systems, processes and policies supporting the development application and approval system have effectively addressed the majority of recommendations made in the previous audit report, while also facilitating better development outcomes for industry and the ACT community. Notwithstanding these significant reforms weaknesses, that include issues that were the subject of three of the 22 audit recommendations made in the previous Auditor-General's Office report, still prevail. The recommendations that are still relevant from the 2005 audit relate to improvements to administration of the entity referral process and the adoption of Ecologically Sustainable Development principles to individual development assessments.² Further weakness identified through this 2012 audit relate to governance arrangements and urban design.

The ACT development application and approval system for high density residential and commercial developments should be improved to support a more transparent and timely process and to achieve more efficient and effective development outcomes for industry, Government and the ACT community.

'One Government' Approach (Chapter 3)

A 'One Government' approach is not well reflected overall in the current development application referral process for high density residential and commercial developments. Coordination between the Environment and Sustainable Development Directorate and referral entities in processing these development applications needs to be strengthened. The Directorate's business practices generally work well where a development is less complex and where fewer entity referrals are required.

The development application assessment timeliness and accuracy would greatly benefit from the implementation of a regulation that guides the referral process. This would improve the referral agencies understanding and commitment to meeting their obligations. In addition adoption of standardised templates for providing advice from referral agencies would be beneficial. This would provide greater reliability in the accurate transfer of information to the Notice of Decision and, associated with this, the enforceability of conditions attached to the development approval. When the Directorate proposes to issue a Notice of Decision in which it gives approval for a development that a referral entity does not support, or it does not intend including all of the recommended conditions of the referral entity, the entity should be offered the opportunity to consider a draft Notice of Decision and/or be further consulted by attending the Directorate's Major Projects Review Group.

The processing of complex high density residential and commercial development applications is likely to be more efficient if a pre-application interview occurs between the developer,

² Recommendations 13, 14 and 18 of the 2005 ACT Auditor-General's Office Performance Audit on the efficiency and effectiveness of the development application and approval process.

referral entities and the Directorate. Accordingly, the Directorate needs to foster the attendance of all relevant referral entities at these meetings and circulate notes from such meetings.

A review of arrangements for meeting *National Capital Plan* requirements needs to be undertaken to give assurance that all relevant development applications comply with the Plan. Such a review should aim to address the potential risks that developments will be approved that are inconsistent with planning and development requirements of the *National Capital Plan*.

Performance and Governance (Chapter 4)

The Environment and Sustainable Development Directorate did not meet the statutory processing timeframes of 30 and 45 days for high density residential and commercial developments in the majority (85%) of complex development applications reviewed by Audit. Given that the statutory timeframes for residential and commercial development applications is significantly shorter than what is actually being achieved, it seems that a review is warranted. Existing timeframes maybe aspirational, rather than pragmatic. More achievable timeframes will provide greater certainty for the community and developers.

Public reporting on the development application and approval system by the Directorate should be strengthened through sharper, more precise external accountability indicators and internal performance measures for the assessment of complex development applications. In addition, the capture of specific and robust qualitative and quantitative performance information, and associated monitoring and reporting, for high density residential and commercial developments should foster a drive for greater continuous improvement in the system.

A review of the Directorate's Major Projects Review Group and Executive Policy Committee will streamline the internal referrals process and likely improve the overall assessment and approval times of complex development applications. This review should consider integrating a Development Forum to provide advice to the Executive Policy Group on systemic issues and policy lessons.

Environmentally Sustainable Development and Urban Design (Chapter 5)

The Directorate has not fully integrated environmentally sustainable development and urban design principles into development application processes for high density residential and commercial developments. This needs to be addressed through the provision of relevant information and guidance for developers, referral entities and Directorate Case Officers involved in supporting the development application process.

KEY FINDINGS

1.24 The audit conclusion is supported by the following findings:

‘One Government’ Approach (Chapter 3)

- A ‘One Government’ approach is not well reflected in the current development application referral process. There is need for stronger collaboration and integration between the Directorate and referral entities in consideration of high density residential and commercial developments.
- Audit found that the referral process is not regulated. Regulation would enable the Directorate to enforce a collective action and allocate responsibilities, rather than relying solely on information requests and collaborative partnering approaches.
- The Directorate does not provide appropriate guidance and assessment tools for Case Officers to ensure comprehensive and consistent consideration of development proposals against legislative requirements of the *National Capital Plan*, this increases the risk of non-compliance of development proposals with the *National Capital Plan*.
- At times, the Directorate has inadvertently omitted inviting relevant referral entities, even though the development application impacts on assets, services or infrastructure under a referral entity’s responsibility. In other instances, referral entities have attended pre-application meetings, after being informed of relevant development proposals from other referral entities.
- Notice of Decisions prepared by the Directorate do not always articulate conditions and advice provided by referral entities in a complete or consistent manner and do not accurately convey the intention of the entities advice. This can result in incomplete and unenforceable approval conditions.
- Referral entities are not given an opportunity to review the Notice of Decision prior to being finalised and issued to the applicant. Consequently, referral entities are not made aware of instances where advice is changed by the Directorate or where the Directorate may not act consistently with the advice, until after the development application is approved and the decision is formally issued to the applicant.
- Referral entities have differing levels of access or connectivity to key Environment and Sustainable Development Directorate systems which support the development application assessment process, such as eDevelopment and Objective. This results in inefficiencies due to the manual handling of information, the creation of disparate systems by individual entities, the inability to access information in a timely manner and lack of assurance that all development application records are effectively captured in one system.
- As a result of a lack of access by referral entities to eDevelopment, the Directorate has no system in place to monitor and report on the progress of development application referrals. The lack of a reporting facility limits the Directorate’s ability to improve development application performance, in terms of the timeliness of responses of referral entities. Audit sighted the use of informal records, such as

calendar reminders and individualised tracking sheets to record when the development application had been sent to referral entities. This approach increases the risk that the Directorate may not be able to account for the status of the development proposal after being referred to the various entities and a possibility that the 15 day statutory timeframe may in some cases be compromised.

Compliance and Performance Against Obligations (Chapter 4)

- The Directorate has a statutory obligation under the *Planning and Development Act 2007* to decide high density residential and commercial developments within a prescribed timeframe of 30 or 45 days (depending on representations). In a sample of high density residential and commercial development proposal examined in this audit, the Directorate were found to have decided development applications outside the statutory timeframes in 21 of the 25 (85%) of the applications reviewed.
- Although the *Act* legislates timeframes for deciding a development application before it becomes appealable as a deemed refusal, the Directorate's external accountability indicator, reported to Government and the community, for the percentage of development application decisions made within time is only 75%. This means that there is an acceptance by the Directorate that 25% of all merit assessed development applications are unlikely to be decided within the statutory timeframes due to their complexity.
- The current accountability indicators for the Directorate provide Government and the community with only a consolidated view of all processing times for merit track development proposals and do not discriminate between the different types of developments within the merit track. This may conceal or distort the Directorate's true performance in processing high density residential and commercial development applications.
- In the 25 sampled high density residential and commercial development applications, audit noted that the Directorate had not undertaken a formal assessment of risk or complexity for each individual development application. Therefore there was no prioritisation of development applications on the basis of; risk, complexity and resourcing.
- The current working arrangements for the assessment of merit track development proposals results in a linear, reactionary approach to processing development applications. High density residential and commercial development applications warrant a proactive approach to processing by the Directorate's Case Officers.
- Although considered a valuable mechanism for providing assurance over development application decisions by senior Directorate stakeholders, the internal referrals to the Major Projects Review Group and the Executive Policy Committee can lead to delays in the development approval process due to the volume of development applications referred and the frequency of committee meetings.
- There is limited internal audit coverage and assurance over the development application approval process due to an absence of integration and coordination between the development assessment quality assurance program and the Directorate's Internal Audit function.

Environmental and Sustainable Development and Urban Design (Chapter 5)

- The *Territory Plan* sets the strategic direction for planning and development in the ACT. Key directions are environmental sustainability and high quality, creative design. With respect to the latter, it sets clear goals to preserve Canberra's 'garden city' and 'bush capital' qualities, and expects urban design to acknowledge Canberra as the national capital.
- The Directorate has identified at a high level how the principles of environmental sustainability can be built into planning and development activities. The Directorate has integrated some of these into the development application process. For example, development proposals are assessed under the 'Waterways: Water Sensitive Urban Design General Code' of the *Territory Plan*. The Directorate continues to receive and incorporate expert advice from referral entities with environmental responsibilities.
- There is a need to identify the full suite of potential environmental sustainability issues for development applications, and to integrate these into the development applications process. This applies to both the Directorates responsibilities and referral entities, given that environmentally sustainable development cuts across the responsibilities of all areas of Government.
- There is limited guidance for Case Officers involved in advising applicants and assessing development applications against the urban design principles of the *Canberra Spatial Plan*. Although not a statutory requirement, the Canberra Spatial Plan sets out the ACT Government's strategic development of Canberra over the next 30 years.
- The limited guidance is reflected in the 25 sampled development applications examined by Audit where the majority of assessments did not include urban design considerations. The only exception was one large-scale development proposal.

Recommendations and response to the report

- 1.25 The audit includes six recommendations to address the audit findings presented in this report. Priority should be given to the implementation of Recommendations **one and two** of this report, as they provide the greatest short-term benefits in improving the efficiency and effectiveness of the development application and approval system for high density residential and commercial developments.
- 1.26 In accordance with Section 18 of the Auditor-General Act 1996, a final draft of this report was provided to the Director-General of the Environment and Sustainable Development Directorate for consideration and comments. The Director-General's overall response is shown below:

I support the overall thrust of the Report that seeks improvements in the management of, and service delivery for, more complex development proposals. In responding to your recommendations, there is a need to ensure that the integrity of the whole development application system – one based on nationally

and industry agreed approaches that seek to standardise the management of all development proposals – can be maintained. To that end, the Directorate can look to making best use of the ‘one Government’ approach to ensure advice, information and systems are as streamlined and connected as possible within existing frameworks.

The Directorate has made strong improvements in the development application system and in the service delivery culture of the planning and land authority since the Planning and Development Act came into effect in 2008. I believe these improvements are widely recognised in the community and across the development industry. There is a strong commitment within the Directorate to continue to improve delivery of outcomes for the community and for the broader industry and your Report will play a role in ensuring those improvements continue.

- 1.27 In addition, the Director-General provided responses to each recommendation, as follows.

Recommendation 1 (Chapter 3 – ‘One Government’ approach)

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 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.

Environment and Sustainable Development Directorate Response:

Agreed in part

The Directorate has worked closely with industry and other stakeholders to ensure administrative processes do not add unnecessarily to timeframes and costs of development and, where regulated, that the regulation serves to streamline its activities. To the extent that this principle can be continued in a regulation, and acknowledging that referral processes can be improved, the Directorate will review appropriate mechanisms to ensure entity referrals are most effective. The Directorate considers that the 'one Government' approach can be bolstered through an improved pre-application advice processes that could achieve these outcomes for all development proposals that require referral to an entity.

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

Recommendation 2 (Chapter 3 – 'One Government' approach)

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).

Environment and Sustainable Development Directorate Response:

Agreed in part

The Directorate 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. While a number of referral entities already have core conditions that are imposed on development decisions, it needs to be acknowledged that the complexity of development applications examined in this Report, may not lend itself to the development and/or use of standard conditions.

Consistent with the principles of streamlining processes and ensuring timely delivery of decisions on development applications, the Directorate will consider the merits of allowing a review of Notices of Decision prior to their release. It must be noted, however, that the Directorate's current actions in this regard are consistent with existing provisions of the Act (section 120) that allow decisions to be issued after consideration of referral entity advice.

Recommendation 3 (Chapter 4 – Performance and Governance)

A review of statutory timeframes for deciding a high density residential or commercial development should be undertaken and improvements made to the associated accountability indicators, by:

- Reviewing the aspirational statutory timeframes stated within the *Planning and Development Act* for high density residential and commercial developments;
- Segregate and appropriately align quantitative external accountability indicators for high density residential and commercial developments; and
- Develop specific internal quantitative and qualitative accountability indicators for high density residential and commercial developments.

Environment and Sustainable Development Directorate Response:

Agreed in part

The Planning and Development Act (the Act) currently provides decision timeframes for applications within assessment tracks, rather than by the content of the proposal. This approach is consistent with that agreed by the Government in consultation with industry and other stakeholders, to streamline development application processes. The Territory Plan supports this structure by acknowledging the increasing levels of complexity of types of development in each assessment track.

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.

These applications are not the bulk of the Directorate's overall development application workload; the 175 applications identified as high density residential or commercial developments lodged in the past three financial years (Para 1.7 of the Report) represent approximately three percent of the total number of development applications assessed during this period (approximately 5200). 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 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.

The Directorate agrees that a stronger focus on the pre-application processes will work to address assessment times and, consistent with recommendation 2, will focus on mechanisms to achieve efficiencies through that 'one Government' approach.

Auditor General's Comment:

The number of high density residential and commercial development applications assessed by the Directorate in the past three financial years represents approximately three percent of their portfolio of development applications, as documented in Table 2.1 of the Audit Report. The value of this three percent of development applications is approximately \$4.8 Billion, close to one-third of the total value of all development applications assessed by the Directorate in the 2008/09 to 2010/11 financial years. This is presented in Table 2.1 of the Audit Report.

High density residential and commercial development applications are likely to have associated risks that are significantly higher than those presented by single-dwelling development applications or signage development applications, which make up a large proportion of the Directorate's total portfolio of development applications.

Recommendation 4 (Chapter 4 – Performance and Governance)

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.

Environment and Sustainable Development Directorate Response:

Agreed

To support the streamlined approach to development assessment established in the Planning and Development Act, 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 e-Development system that will bring a range of improvements, including better tracking of activities such as entity referrals, will provide a key opportunity for the Directorate to review its work practices to ensure responsive management of all development applications.

Recommendation 5 (Chapter 4 – Performance and Governance)

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.

Environment and Sustainable Development Directorate Response:

Agreed

The Directorate acknowledges that better and more strategic use could be made of both the Major Projects Review Group and the Executive Policy Committee and has begun work to review both their scope and operation. 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 look at its internal audit program for opportunities to incorporate a review of development application and approval processes as appropriate.

Recommendation 6 – (Chapter 5 – Environmentally Sustainable Development and Urban Design)

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.

Environment and Sustainable Development Directorate Response:

Agreed

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 acknowledges that there is a gap between that high level framework and its application in development assessment processes that 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 will be progressed over the coming period. The Directorate believes, however, environmental sustainability and urban design outcomes are not achieved solely through development application decisions. 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.

2. THE DEVELOPMENT APPLICATION AND APPROVAL SYSTEM

2.1 This chapter provides an overview of the development application and approval system for high density residential and commercial developments in the ACT.

REGULATORY REQUIREMENTS

2.2 The development application and approval process in the ACT is complex due to the breadth of legislative and regulatory planning rules, the number of entities involved, the scope of public notification and the avenues for reconsideration and appeals.

2.3 The ACT development application and approval system is administered by the planning and land authority within the Environment and Sustainable Development Directorate, which is the Government's statutory agency responsible for planning for the future growth of Canberra in partnership with the community.³

2.4 The legislative framework which underpins the development application and approval system in the ACT consists primarily of the *Planning and Development Act 2007* (the Act), the Territory's planning legislation, and the *Planning and Development Regulations 2008* (the Regulations), which supports the legislation. The objective of the Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT, consistent with the social, environmental and economic aspirations of the people of the ACT, and in accordance with sound financial principles.

2.5 Accompanying the Act and the Regulations is the *Territory Plan*, the key statutory planning document in the ACT which provides the policy framework for the administration of planning in the Territory.

2.6 Development in the ACT, given Canberra's status as the National Capital, must be consistent with the *National Capital Plan*, as well as the strategic plan for Canberra and the Territory. The *National Capital Plan* is administered and reviewed by the National Capital Authority, the Commonwealth agency responsible for overseeing the planning and development of Canberra as the national capital. The National Capital Authority has development control over designated land in the territory and consequently such developments are not assessed by the Environment and Sustainable Development Directorate.⁴

³ Note that for ease of presentation, all references to the planning and land authority will be taken to mean the Environment and Sustainable Development Directorate (or the Directorate) for the remainder of this report

⁴ Areas of land that have the special characteristics of the National Capital.

APPLICATION AND APPROVAL PROCESS

- 2.7 Prior to construction of any development proposal in the ACT, a development application must be submitted by the applicant to the Environment and Sustainable Development Directorate for approval unless specifically exempt. The Directorate considers the design of the proposed development and ensures that it is appropriate to an area and conforms with any lease requirements, the Territory Plan, codes, regulations or specific development conditions that may apply to a particular piece of land.
- 2.8 Land in the ACT is divided into sections and blocks. The blocks are zoned and the zoning determines what kind of development is allowed on a block. There are 23 different zones, including Residential Zones (RZ) and Commercial Zones (CZ). The planning controls for each zone are detailed in the relevant development tables and codes of the Territory Plan.
- 2.9 The approvals process for development applications differs according to the type, location and complexity of the development. In the ACT a track-based system is applied for the assessment of development applications, where development proposals are categorised and assessed through different pathways/tracks depending of the location, scale and nature of the development. The following assessment tracks apply in the ACT:

code track – for development proposals that can be assessed using the rules in the code that applies to the proposals. This track applies to simpler developments that meet all the relevant rules in the Territory Plan;

merit track – for development proposals that can be assessed using the rules and criteria in the code that applies to the proposals. Most development proposals fall into this track including high density residential and commercial developments; and

impact track – for development proposals that can be assessed using the rules and criteria in the code that applies to the proposals, relevant environmental impact statements and the strategic directions. This includes estate developments and the construction of a major road, dam or transportation corridor.

2.10 The development application assessment process extends from the lodgement of a development application with the Directorate to the approval of the development proposal, articulated in the Notice of Decision. This includes the following key elements:



- **lodgement** – development applications are lodged electronically in the ACT through the eDevelopment system;
- **completeness check/initial assessment** – a completeness check of documentation submitted with the application and an initial assessment to determine the assessment track, development application fee and the extent of public notifications and entity referrals required;
- **design and siting** – the assessment of the development application against the relevant codes of the *Territory Plan*, objectives of the zone and the suitability of land for the development;
- **public notification** – the development application is publically notified by the Directorate for comment through letters sent to adjoining neighbours, or a sign placed on the property, an advertisement placed in the newspaper and letters sent to adjoining neighbours;
- **entity referrals** - the provision of advice from external referral entities to inform the approval decision. Entity advice is based on the assessment of development application compliance with various aspects of legislation, policy and standards/codes relevant to planning and development in the ACT; and
- **decision** – a decision on the development proposal based on the outcome of design and siting, public notification and entity referrals. The decision is incorporated in a Notice of Decision, which is the principal mechanism for advising applicants and the community of the outcome of the Government’s consideration of the development application.

UNDERSTANDING THE PLANNING RULES IN THE ACT

2.11 The Directorate’s development application webpage is a key source of guidance to inform applicants, industry and the community about the development and approval process. It contains information packs, fact sheets, guidance, publications and application forms for development applications, as well as information about the entity referral process. The site also includes links to the key planning and development legislation, regulation and statutory documentation in the ACT. In addition, information is provided on different aspects of a development proposal, associated criteria against which the application will be assessed, and relevant referral entities that the Directorate will consult about compliance against these criteria.

- 2.12 The Directorate's website also provides access to eDevelopment, an online lodgement and tracking system for applicants. Applicants are able to lodge development applications online, upload plans and other key documentation to support an application, lodge amendments to the development application, pay development application fees, view the status of the development application through its lifecycle and communicate with the Directorate. At the beginning of 2012, online lodgement of development applications became a mandatory requirement in the ACT.
- 2.13 The Directorate also operates a customer service centre or shopfront to provide advice and assistance to applicants on the development application approval system. Customer Service Officers are available to provide the community with information in regards to development assessment tracks and the development application approval process, assist applicants with accessing eDevelopment and lodging development applications online, collect development application fees, organise pre-application meetings and respond to general inquiries.
- 2.14 The Directorate's website provides a complete source of information on the development application approval system in the ACT, providing the public and industry with comprehensive information on planning legislation and codes, public notification mechanisms and the entity referral process. The eDevelopment system is supported by online demonstrations and guidance material. The Directorate's customer service centre is considered a valuable facility in servicing those members of the public who require further assistance and information, or who do not have private access to the internet.

ENTITY REFERRALS

- 2.15 A key element of the Directorate's approval process is the entity referral process. The referral entities include certain Government bodies and private corporations with regulatory responsibility or stewardship over assets, services and infrastructure that affect planning and development.
- 2.16 The development application system involves mandatory and non-mandatory referrals. Mandatory referrals for high density residential and commercial developments include: the Conservator of Flora and Fauna (for applications relating to any part of a declared site), the custodian of the land (for applications relating to unleased or public land), and any entities listed for referral in the *Territory Plan*⁵.
- 2.17 Non-mandatory referrals occur when the Directorate requires supplementary information and advice in order to make an assessment. Involvement of a non-mandatory referral entity is decided on a case-by-case basis, depending on the nature, type, use and location (including proximity to other assets/features) of the proposed development.

⁵ See *Planning and Development Regulation 2008*, Part 3.2, Section 26.

2.18 The most common referral entities for the majority of high density residential and commercial development applications include the Territory and Municipal Services Directorate, Conservator of Flora and Fauna, Environment Protection Authority, Heritage ACT and ActewAGL (electricity, gas and water). The responsibilities of each of these entities is presented below:

Figure 2.1: Responsibilities of key referral entities in the development application process

Territory and Municipal Services	<ul style="list-style-type: none"> • Manages municipal assets and services including roads, footpaths and verges, traffic and vehicular access, parking, public transportation and waste management.
Conservator of Flora and Fauna	<ul style="list-style-type: none"> • Provides advice in relation to nature conservation, including on species and ecological communities that are threatened with extinction and processes that are ecologically threatening. • Responsible for the Tree protection Unit which regulates protected trees in the ACT in accordance with the <i>Tree Protection Act 2005</i>.
Environment Protection Agency	<ul style="list-style-type: none"> • Administers the <i>Environmental Protection Act 1997</i> and <i>Environmental Protection Regulations 2005</i> which regulates waste water reuse, air, contaminated sites, hazardous materials, noise, water quality and other environmental activities.
Heritage ACT	<ul style="list-style-type: none"> • Responsible for the identification and assessment of nominations to the ACT Heritage Register and providing advice on appropriate conservation of cultural, natural and Aboriginal heritage places and objects in the ACT.
ActewAGL	<ul style="list-style-type: none"> • Owns and operates the ACT electricity and gas networks and manages the ACT water and sewerage network on behalf of ACTEW Corporation.

2.19 Once a development application is referred, referral entities are required to provide their advice to the Directorate within a statutory timeframe of 15 working days⁶. The advice is expected to indicate whether the development application should be supported, supported with conditions or not supported.

CONSULTATION AND COMMUNICATION

2.20 All merit track assessed development applications undergo a process of public notification whereby the community is notified of the development proposal and invited to submit a representation in regards to the development. Any member of the community that has been publically notified can make a written representation about a development application.⁷

⁶ See *Planning and Development Act 2007*, Part 7.3, Section 149.

⁷ *Planning and Development Act 2007*, Division 7.3.8, Section 156(1).

- 2.21 A representation is a comment on, or objection to a development application received during the public notification period. To be considered as part of the Directorate's assessment of the development proposal, a representation must be made during the public notification period. Representations form part of the public register and are made available to the applicant, unless an exemption has been granted.
- 2.22 The extent or type of public notification for a development application is specified in the Regulations and consists of either:
- *minor public notification* – letters are sent to adjoining neighbours, who have 10 working days in which to make a representation; or
 - *major public notification* – a sign is placed on the property, a notice is placed in the public notices section of *The Canberra Times* and letters are sent to adjoining neighbours, who have 15 working days in which to make a representation.
- 2.23 In instances where a development application is materially amended, the community must be re-notified of the development proposal. In addition, the Directorate is required to notify in writing the development application approval decision as well as any rights of review to each person who has made a representation during the public notification period.⁸

APPEALS AND ARBITRATION

- 2.24 Applicants, who have a development application approved subject to conditions, or refused, can request the Directorate to reconsider the original decision. Applications for reconsideration must be lodged by the applicant within 20 working days of the applicant being notified of the decision and attract an administrative fee. A Directorate delegate, more senior to the original Case Officer who decided the development application, undertakes the reconsideration process.
- 2.25 The Directorate is required to reconsider the original decision no later than 20 working days after it receives the application, and must either make a decision in substitution for the original decision, or confirm the original decision.⁹ The applicant is free to appeal the reconsidered decision in the ACT Civil and Administrative Appeals Tribunal if they are still dissatisfied.
- 2.26 In addition to reconsideration, applicants who have a merit assessed development application approved with conditions, or refused, can appeal the decision directly to the ACT Civil and Administrative Appeals Tribunal. The right of review is only available in relation to the decision, or part of the decision, where the development proposal is

⁸ Planning and Development Act 2007, Division 7.3.8, Section 170.

⁹ Planning and Development Act 2007, Division 7.3.10, Section 193.

subject to a rule and does not comply with the rule, or no rule applies to the proposal¹⁰.

- 2.27 In the ACT development application decisions made by the Directorate can also be appealed to the ACT Civil and Administrative Appeals Tribunal by third-parties, such as members of the community¹¹. Certain conditions must be met to make such a third-party appeal, for example the development application must have been lodged in the merit or impact track and have undergone major public notification. In addition, developments within particular areas of the ACT have limitations on third-party appeal rights.

HIGH DENSITY RESIDENTIAL AND COMMERCIAL DEVELOPMENTS

- 2.28 High density residential and commercial developments represent the majority of large scale and complex developments in the ACT. These developments generally attract a significant degree of scrutiny from the community, Government and industry due to their size, cost and location, as well the economic and community benefits they offer.
- 2.29 The term high density residential is not defined in the Act or the *Territory Plan*, and for purposes of the Audit, is taken to mean developments over 60 dwellings per hectare and/or generally five or more storeys high. When interpreting the *Territory Plan*, high density includes Residential Zones RZ4 and RZ5. An example of a high density residential development is the Kingston Foreshore RZ5 dwelling pictured in Figure 2.2.

Figure 2.2: High Density Residential Development



¹⁰ Planning and Development Act 2007, Division 7.2.3, Section 121.

¹¹ DAs decided by the Minister, under Division 7.3.5 of the Planning and Development Act 2007 cannot be appealed by a third-party.

2.30 Commercial zones are defined in the *Territory Plan* and include the following:

- CZ 1 – Core Zone;
- CZ 2 – Business Zone;
- CZ 3 – Services Zone;
- CZ 4 – Local Centre Zone;
- CZ 5 – Mixed Use Zone; and
- CZ 6 – Leisure and Accommodation Zone.

2.31 An example of a commercial zone CZ1 development is the recently completed ANU Exchange building in Canberra City, illustrated in Figure 2.3.

Figure 2.3: Commercial Development



2.32 There have been 5 high density residential¹² and 170 commercial development applications¹³ lodged for approval with the Directorate in the past three financial years. The combined construction value of these development proposals is approximately \$4.8 Billion, as shown in Table 2.1.

Table 2.1: High Density Residential and Commercial Development Data¹⁴

	Financial Year	High Density Residential	Commercial	All Developments
Number of DAs Lodged	2008/09	2	52	2,434
	2009/10	1	71	1,596
	2010/11	2	48	1,302
Construction Value of DAs	2008/09	\$311,153,623 ¹⁵		\$1,087,988,667
	2009/10	\$458,253,380		\$2,241,531,138
	2010/11	\$414,507,346		\$1,499,057,617

2.33 There has recently been considerable growth in the number of high density residential and commercial developments in the ACT and this growth is expected to continue into the future, consistent with the ACT Government’s strategy for infill development.

2.34 The *Canberra Spatial Plan*, which provides the Government’s strategic directions for the development of Canberra over the next 30 years and beyond, includes higher density residential development within existing urban areas as a key initiative. Consequently over the next 15 years, the number of high density residential and commercial development applications is expected to increase significantly.

2.35 An efficient and effective development application and approval system is critical to ensure that that the expected growth in high density residential and commercial developments in the Territory is adequately supported, and approved in line with both legislative and policy requirements, as well as the expectations of the ACT Government and community.

¹² This figure is based on the definition of ‘high density’ applied in this audit, being development that include 60 or more dwellings per hectare and/or are generally five or more storeys high

¹³ Commercial developments also include mixed-use buildings which contain both commercial and residential components

¹⁴ Data sourced from the Directorate’s Customer Service Team

¹⁵ Only aggregated high density and commercial development data available for construction value.

3. 'ONE GOVERNMENT' APPROACH

3.1 This chapter considers the extent to which the Environment and Sustainable Development Directorate manages its obligations to ensure a 'One Government' approach for the development application approval process in relation to high density residential and commercial developments.

SUMMARY

Conclusion

A 'One Government' approach is not well reflected overall in the current development application referral process for high density residential and commercial developments. Coordination between the Environment and Sustainable Development Directorate and referral entities in processing these development applications needs to be strengthened. The Directorate's business practices generally work well where a development is less complex and where fewer development approval conditions are required.

Development application assessment timeliness and accuracy would benefit from the adoption of standardised templates for providing advice from referral agencies. This would give greater reliability in the accurate transfer of information to the Notice of Decision and, associated with this, the enforceability of conditions attached to the development approval. When the Directorate proposes to issue a Notice of Decision in which it gives approval for a development that a referral entity does not support, or it does not intend including all of the recommended conditions of the referral entity, the entity should be offered the opportunity to consider a draft Notice of Decision and/or be further consulted by attending the Directorate's Major Projects Review Group.

The development application assessment timeliness and accuracy would greatly benefit from the implementation of a regulation that guides the referral process. This would improve the referral agencies understanding and commitment to meeting their obligations.

The processing of complex high density residential and commercial development applications is likely to be more efficient if a pre-application interview occurs between the developer, referral entities and the Directorate. Accordingly, the Directorate needs to foster the attendance of all relevant referral entities at these meetings and circulate notes from such meetings.

A review of arrangements for meeting the *National Capital Plan* requirements needs to be undertaken to give assurance that all relevant development applications comply with this plan. Such a review should aim to address the potential risks that developments will be approved that are inconsistent with planning and development requirements of the *National Capital Plan*.

Key Findings

- The ACT Government adopted a 'One Government' approach to business to deliver high quality services to the people of Canberra and to support Government decision making.

The development application referral process lends itself to the adoption of a 'One Government' approach. However, to achieve this, efficient coordination is needed to effectively integrate the range of specialist advice needed to produce a comprehensive development decision that meets the standards of planning and development requirements.

- The Directorate managed 50 high density residential and commercial development proposals in the 2010/11 financial year, ranging from reasonably straightforward applications to multi-million dollar proposals that are required to meet various statutory and policy requirements.
- Audit found that the referral process is not regulated. Regulation would enable the Directorate to enforce a collective action and allocate responsibilities, rather than relying solely on information requests and collaborative partnering approaches.
- The Directorate has not formalised its arrangements with referral entities, which has affected the efficiency and effectiveness of the referral process. There is a need to articulate roles and responsibilities, timeframes for advice, communication protocols, standards for the quality and presentation of advice, issue escalation processes, referral priorities and dispute resolution mechanisms.
- The Directorate does not provide appropriate guidance and assessment tools for Case Officers to ensure comprehensive and consistent consideration of development proposals against legislative requirements of the *National Capital Plan*, this increases the risk of non-compliance of development proposals with the *National Capital Plan*.
- Notice of Decisions prepared by the Directorate do not always articulate conditions and advice provided by referral entities in a complete or consistent manner and do not accurately convey the intention of the entity advice. This can result in incomplete and unenforceable approval conditions.
- Referral entities are not given an opportunity to review the Notice of Decision prior to being finalised and issued to the applicant. Consequently, referral entities are not made aware of instances where advice is changed by the Directorate or where the Directorate may not act consistently with the advice, until after the development application is approved and the decision is formally issued to the applicant. The complex nature of high density residential and commercial development proposals means that early engagement of applicants is likely to result in stronger development applications.
- Pre-application advice provides developers the opportunity to clarify expectations and compliance requirements, identify potential issues, receive more detailed information and obtain general direction. Good advice will result in higher quality development applications and reduce the overall timeframe and cost of the development application process for both the applicant and Government. However, not all referral agencies attend such meetings.
- Referral entities have differing levels of access or connectivity to key Directorate systems which support the development application assessment process, such as eDevelopment and Objective. This results in inefficiencies due to the manual handling of information,

the creation of disparate systems by individual entities, the inability to access information in a timely manner and lack of assurance that all development application records are effectively captured in one system.

- As a result of a lack of access by referral entities to eDevelopment, the Directorate has no system in place to monitor and report on the progress of development application referrals. The lack of a reporting facility limits the Directorate's ability to improve development application performance, in terms of the timeliness of responses of referral entities. Audit sighted the use of informal records, such as calendar reminders and individualised tracking sheets to record when the development application had been sent to referral entities. This approach increases the risk that the Directorate may not be able to account for the status of the development proposal after being referred to the various entities and a possibility that the 15 day statutory timeframe may in some cases be compromised.
- In the 25 sampled high density residential and commercial development applications, audit noted that the Directorate had not undertaken a formal assessment of risk or complexity for each individual development application. Therefore there was no prioritisation of development applications on the basis of; risk, complexity and resourcing.
- Shortcomings regarding access or connectivity to key Environment and Sustainable Development Directorate systems are progressively being addressed. Importantly, the Territory and Municipality Services Directorate, the largest referral entity, anticipates that it will have full access to the Directorate's system by December 2012.

COORDINATION

- 3.2 The ACT Government has adopted a 'One Government' approach for the delivery of community services which promotes a greater level of coordination, cohesion and alignment of official effort to ensure the community receive a whole-of-government service. The principles of the 'One Government' approach are particularly relevant in the entity referral process for development assessment approvals, where the Environment and Sustainable Development Directorate refers development proposals to ACT Government and external entities for advice to inform their approval decisions.
- 3.3 The 'One Government' approach to conducting ACT Government business was adopted in 2011, following the Review of ACT public sector structures and capacity, *One ACT Government – One ACT Public Service* (Hawke Review). The approach promotes a greater level of coordination, cohesion and alignment of official effort to ensure that the community receives a whole-of-government service, rather than multiple, discrete agency engagements.
- 3.4 Given the breadth of entities concerned in the assessment of high density residential and commercial developments, the level of cooperation and coordination in the referral process has implications for timeliness, quality and consistency of the approval decision. Strong integration and cohesiveness in the referral process strengthens the efficiency and effectiveness of the development application system.

- 3.5 Audit found that the referral process is not regulated. Regulation would enable the Directorate to enforce a collective action and allocate responsibilities, rather than relying solely on information requests and collaborative partnering approaches.

Coordination and engagement with referral entities

- 3.6 The Environment and Sustainable Development Directorate (the Directorate) is the lead agency responsible for making the approval decision regarding development applications. The process requires the Directorate to coordinate with referral entities to obtain the information necessary to make a comprehensive decision that reflects the ACT Government's planning and development objectives.
- 3.7 The Directorate conducts an initial assessment to identify and refer the development application to relevant referral entities. It provides the development proposal directly to each referral entity for assessment against their respective legislation, policy, standards and codes. Each entity responds directly back to the Directorate with advice in relation to the development application to support the Directorate's approval decision.
- 3.8 The number of referrals depends upon the size and complexity of the development proposal. Larger, high density residential and commercial development applications can involve as many as 12 referral entities, each with different areas of technical advice to integrate into the broader policy framework. The Directorate can also source advice internally, such as leasing, design policy, infrastructure policy and quality assurance for large-scale and complex development proposals.
- 3.9 Referral entities may provide advice on related areas of responsibility. For example, high density development applications can involve up to three separate entities, including the Conservator of Flora and Fauna, Environment Protection Authority and Heritage ACT, providing advice on various aspects of environmental issues. In such instances, the Conservator of Flora and Fauna (Tree Protection Unit) may, for example, define trees as a regulated or registered tree, while Heritage ACT may define a tree as a heritage asset. This is an inherent challenge in the framework for the Directorate to manage.
- 3.10 While the Directorate is required to consider advice received from referral entities, it can approve a development in certain instances¹⁶, even where the approval is inconsistent with the advice of a referral entity.¹⁷ Referral entities do not have a concurrence role in the development assessment process and may only request, but cannot require, conditions of approval.

¹⁶ Planning and Development Act 2007, Division 7.2.3, section 120(d).

¹⁷ Planning and Development Act 2007, Division 7.2.3, section 119.

- 3.11 The Directorate, referral entities and industry stakeholders acknowledge that poor quality and integration of advice and a lack of engagement between entities can lead to non compliance to legislative requirements of entities and/or poor set of conditions as a result of the differing priorities of referral entities.
- 3.12 The management of development approvals with referral entities previously involved a more collaborative approach. This included the management of a Decision Assessment Panel, which was comprised of senior representatives of the Directorate and key referral entities. The Panel, which met bi-weekly, provided a forum to facilitate identification and discussion of issues associated with development proposals. It supported the referral process by determining whether development application documentation was of sufficient quality and comprehensiveness for entities to provide considered advice.
- 3.13 Differing views on the value of the previous Decision Assessment Panel were offered by stakeholders during the audit. The Environment and Sustainable Development Directorate and the Territory and Municipality Services Directorate noted that the resource burden in sending staff to attend the bi-weekly meetings and a lack of sufficient interest and attendance by other referral entities meant that little value was derived from the forum.
- 3.14 However, stakeholders from the Conservator of Flora and Fauna and Environment Protection Authority highlighted the benefits of the Panel in bringing together all the key stakeholders to obtain early and immediate commentary on the development proposal.
- 3.15 The Panel was discontinued, due to resource and time constraints. There has not been a similar forum established to replace the Panel. However, with the aim to streamline the referral process and engage the referral entities earlier in the process, the Directorate has implemented a new application lodgement system and workflow system which provides the referral entity with an electronic copy of the development proposal for consideration. The Directorate acknowledged that by implementing these systems, it allows a more efficient and effective use of Government resources rather than reliance on the previous Panel.
- 3.16 Notwithstanding, audit found that in the absence of an early coordinated and collaborative process, that:
- key referral entities are not always fully informed of complex development applications;
 - issues are not resolved early in the development application process, increasing the risk of delays; and
 - entities do not discuss the broader implications of technical issues, or the potential for contradictory advice by two or more referral entities, closer collaboration would facilitate more effective outcomes.

- 3.17 Audit notes that within the referral entities a number of internal stakeholders are involved in providing advice. This is particularly relevant to the Territory and Municipal Services Directorate (TAMS). TAMS' is large and dispersed in nature and has multiple legislative obligations. TAMS's Operation Support Unit has primary responsibility for coordinating advice from various business units within TAMS.
- 3.18 Audit acknowledges that this coordination unit is faced with difficult challenges to gain and coordinate multiple internal stakeholder views on applications and to consolidate and quality-assure the advice within a 15 day timeframe.
- 3.19 The *Planning and Development Act* currently gives no allowances or differentiation of timelines for this type of complex coordination within referral entities. If consideration is not given, practically the timeliness and/or quality impacts on the overall development application process.
- 3.20 Audit considers that the Directorate needs to enhance its guidance and approach to coordinating and integrating entity advice to be able to efficiently and effectively make decisions on development applications.

One service to applicants

- 3.21 Consistent with the 'One Government' approach, applicants expect a seamless service and single point of contact with Government throughout the development application process. This would consolidate communication between the developer and the Directorate, assist applicants through what may be a complicated application process and ensure a well-considered and integrated outcome.
- 3.22 Once a development application is lodged through eDevelopment, the Directorate assesses the need for advice from referral entities in relation to the development proposal. The Directorate has developed a work instruction to assist its Case Officers in deciding whether or not to make a referral. The work instruction contains a flowchart which first considers the need for mandatory referrals then non-mandatory referrals.
- 3.23 Mandatory referrals for high density residential and commercial developments include the Conservator of Flora and Fauna, the custodian of the land, and any entities required under the *Territory Plan*.
- 3.24 Non-mandatory referrals are guided by a work instruction and a development application Lodgement Checklist. The Checklist contains areas/aspects of development that trigger referral to an entity, such as waste management, traffic and parking, and heritage value.
- 3.25 Following referral, the entity provides the Directorate with advice on the development proposal for consideration in its approval decision. The advice is typically emailed to the Directorate.

- 3.26 Where referral entities identify issues in the development proposal, the Directorate generally refers the applicant directly to the referral entity for resolution, rather than seeking further advice from the entity itself.
- 3.27 This leads to the establishment of direct communication between the applicant and one or more referral entities until entity issues are resolved. Such communications usually continue for the duration of the application process which, for large and complex development applications, can be a number of months.
- 3.28 The establishment of direct communication between applicants and multiple referral entities is inconsistent with the 'One Government' approach. It reinforces approval decisions that reflect discrete compliance requirements of individual referral entities, rather than a single decision that reflects the policy objectives and outcomes of the *Territory Plan*.
- 3.29 The Directorate has not formalised entity referral arrangements by, for example, using service level agreements. The absence of formal agreements affects the efficiency and effectiveness of the referral process, due to poor clarification of roles and responsibilities, timeframes for advice, communication protocols, standards for the quality and presentation of advice, issue escalation processes, referral priorities and dispute resolution mechanisms.

The Environment and Sustainable Development Directorate and National Capital Authority roles and responsibilities

- 3.30 The Directorate's development approval decisions made under the *Act* must be consistent with the *National Capital Plan*. This reflects the dual responsibilities between Commonwealth and Territory Governments for planning and development in the ACT.
- 3.31 There is need to clarify expectations regarding assessment responsibilities between the Directorate and the National Capital Authority. Currently, the Directorate refers the relevant development applications to the National Capital Authority for assessment against the *National Capital Plan*.
- 3.32 In some instances, the National Capital Authority provides a standard response that indicates support for the proposal as long as it complies with the provisions of the *National Capital Plan*.¹⁸ In these circumstances Audit understands that the Directorate's Case Officers are uncertain as to whether or not the National Capital Authority performed an assessment against the *National Capital Plan*.
- 3.33 To account for this uncertainty, the Directorate performs its own assessment of the development application against the requirements of the *National Capital Plan*. However, in performing this role, Case Officers do not have a standardised assessment

¹⁸ This was cited in two of the 25 sample DAs examined by audit.

tool to support a robust assessment. Rather, individual Case Officers use hard copies or word documents of the *National Capital Plan* to exercise individual judgements of compliance of the development application with the Plan. This practice is in contrast to the Directorate's assessment of development applications against the *Territory Plan*, which involves the use of Intellidox templates that are populated with specific criteria selected to ensure assessment against compliance requirements.¹⁹

- 3.34 The National Capital Authority informed Audit that there is significant inconsistency in the type of development applications referred. For example, on occasions, development applications not relevant to the *National Capital Plan* were referred and relevant development applications were not referred. The National Capital Authority pointed to lease variations as an example of development applications that should automatically be referred.
- 3.35 The limited definition of the assessment role between the Directorate and the National Capital Authority does not provide assurance that all development applications are comprehensively assessed for compliance with the *National Capital Plan*. The NCA provided examples to Audit where it had approved a development application and at built form it being a very different development than what had originally been approved at application stage, with no or little information provided why the variation had occurred.
- 3.36 There is a need to better define the type of development assessments referred to the National Capital Authority and provide comprehensive assessment guidelines and tools to assist Directorate staff perform assessments internally. Furthermore, there is also the need for a regular exchange of information between the Directorate and the National Capital Authority regarding development proposals being progressed.
- 3.37 A review of arrangements for meeting *National Capital Plan* requirements needs to be undertaken to address the previously mentioned issues. Such a review should aim to address the potential risks that developments will be approved that are inconsistent with planning and development requirements of the *National Capital Plan*.

Recommendation 1 (Chapter 3 – 'One Government' approach)

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) Considering, regulating the referral process and explicitly defining the:
- roles and responsibilities of the Directorate and each of the ACT referral entities;

¹⁹ The Directorate has developed 'Intellidox' for Case Officers. The Intellidox tool includes a series of templates that, together, list all relevant areas for compliance assessment against the *Territory Plan*.

- stating the timeframes for referrals and receiving advice;
- standards for the quality and presentation of 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.

ENTITY REFERRAL PROCESS

3.38 The advice received from referral entities is a key consideration for the Directorate in deciding development applications. The Directorate must incorporate the advice into a Notice of Decision to advise applicants and the community of the Government's consideration of development applications. The accurate inclusion of entity advice ensures that the applicant receives consistent and important information necessary for compliance.

3.39 Referral entities may request conditions of approval in the Notice of Decision. Compared with general entity advice, conditions are enforceable and must be addressed by the applicant at defined stages of the development.²⁰

3.40 There is a provision within the *Act* for the Directorate to give development approval to a proposal even though the approval may be inconsistent with the advice of a referral entity²¹. In such instances, the Case Officer²¹ must decide that the development is in accordance with the objects of the *Territory Plan*, having first considered any applicable guidelines and realistic alternatives to the proposed development.

Adequacy and clarity of advice received from referral entities

3.41 The Directorate requires referral advice that is clear and comprehensive in order to make robust approval decisions, that is, that all relevant aspects of compliance have been appropriately considered by referral entities. This includes differentiating between:

²⁰ Examples of defined stages of development are "before work commences" or "before the completion of building work".

²¹ Planning and Development Act 2007, Division 7.2.3, Section 119.

- information provided by referral entities to assist the Directorate understand the basis of the assessment decision;
 - extent to which a referral entity supports the decision;
 - any mandatory conditions attached to the entity's support for a development approval; and
 - general entity advice to be relayed as part of the approval decision to the applicant.
- 3.42 The Directorate receives advice from most referral entities in the body of an email, with the assessment of the level of development application compliance often presented as a narrative. The exception to this is ActewAGL, which provides advice in a standard template.
- 3.43 Using a narrative in an email does not always facilitate accurate interpretation of compliance advice by the Directorate. It is difficult for Case Officers to differentiate between information provided to assist the Directorate's understanding of the basis of the assessment outcome, and general advice and conditions to include in the Notice of Decision.
- 3.44 There is considerable variability in the level of detail provided in entity responses. Differences were noted in the advice received from the same referral entity, as well as, from different entities. For example, entity advice can be extensive and heavily technical and, at other times, brief and general. As a result, the Directorate's Case Officer's are at times unclear as to whether all relevant aspects of the development proposal have been appropriately considered by the entity.
- 3.45 The Directorate and referral entities acknowledged that, more recently, a greater commitment has been given to ensuring clear and comprehensive advice, particularly whether the proposal is supported and what conditions are required for approval. This, however, falls short of a standard template across referral entities which would ensure succinct, clear and unambiguous advice. Audit notes that ActewAGL's provision of referral advice in a standard template minimised the level of the Government's follow-up work.
- 3.46 The need for the Directorate to seek clarification from referral entities on entity advice has potential to impact timeliness for deciding development applications.
- 3.47 These issues, however, are likely to be addressed if Recommendation 1 (a) is adopted.

ACCURATE NOTICE OF DECISIONS

- 3.48 The Directorate is required to consolidate entity advice for a development application into the Notice of Decision.²² The *Act* prescribes certain content requirements that include general information about the development proposal and any associated conditions, and, in respect of referral entity advice, a summary of the advice received, the Directorate's response to that advice, and a statement as to whether the advice was followed²³. Once finalised, the Directorate must provide a copy of the Notice of Decision to each referral entity.²⁴
- 3.49 The Directorate usually copies entity advice directly into the relevant parts of the Notice of Decision.²⁵ The structure of the Notice of Decision facilitates the Directorate meeting the general information requirements of the *Act*. The Directorate also includes a summary of the entity advice, but does not consistently include a response to that advice or state whether it was followed.
- 3.50 There are also several issues with the incorporation of entity advice into the different parts of the Notice of Decision. The first is where referral entities have provided several elements of advice throughout the entity referral process, such as, due to amendments to the development application. In these cases, the Directorate generally incorporates only the most recent advice provided by referral entities, rather than including all previous entity advice. This practice results in inconsistencies in the referral entity information included in the Notice of Decision and the absence of information relevant to the approval decision.
- 3.51 There are instances where general entity advice is included in the Notice of Decision, rather than conditions of approval. This is likely to be a result of misinterpretation of entity conditions of approval as general advice, and being copied into the incorrect part of the Notice of Decision²⁶. As general advice is unenforceable, this means that the developer may not adhere to mandatory conditions intended for compliance. One referral entity noted that it had requested the Directorate to make a formal correction after an Notice of Decision was issued to address the error.
- 3.52 In addition the Directorate has approved development applications not supported by referral entities. For example, on two occasions the Environmental Protection Authority did not support a development application that failed to provide a noise management plan, which is a mandatory requirement under the *Territory Plan* for

²² Planning and Development Act 2007, Division 7.3.8, Section 170(3).

²³ Planning and Development Act 2007, Division 7.3.8, Section 172(2)(a).

²⁴ Planning and Development Act 2007, Division 7.3.8, section 174(2).

²⁵ The parts of the NOD include: Conditions for approval; Reasons for decision, which includes the specific zoning codes for compliance; Public notification and entity advice, including the general advice provided by referral entities; and, Administrative Information, which includes relevant dates, inspections, reconsideration process (e.g. if the applicant asks for a review of approval conditions), and applicant appeal rights.

²⁶ That is, the condition is copied into the 'Public notification and entity advice' rather than the 'Conditions for approval' part of the NOD.

certain developments. However, the Directorate approved the development application, with a condition of approval that the applicant provides a noise management plan endorsed by the EPA.

- 3.53 Currently, only the Conservator of Flora and Fauna has an opportunity to review a decision prior to finalisation. As a member of the Major Projects Review Group, the Conservator of Flora and Fauna representative is able to provide further advice and options for consideration and endorsement by the Major Projects Review Group, where inconsistencies exist between a development application decision and the Conservator's advice.²⁷ For all other referral entities, they are not informed as to whether their advice has been accepted by the Directorate until they receive a copy of the final Notice of Decision. The lack of opportunity to comment means they are unable to provide the Directorate with additional information that may be necessary for a robust approval decision, including alternatives, to ensure compliance of the development.
- 3.54 Issues such as this would largely be resolved if the Directorate were to further consult with those referral entities who do not support the development application or whose requirements are not proposed to be included, for review or comment prior to issuing the Notice of Decision to the applicant. This could be achieved by:
- a draft Notice of Decision being sent to the referral entity; and/or
 - the referral entity being invited to attend the Major Projects Review Group when the application is considered.
- 3.55 While it is acknowledged that, more recently, the Directorate and referral entities have given attention to ensuring that clear and comprehensive advice is given, particularly whether the application is supported and what conditions are required, Audit considers that there is still a need to improve the level of integration of advice from referral entities to better achieve the objectives of the 'One Government' approach, particularly in relation to the approval decision provided to the applicant.²⁸ The risk and need for coordination increases for larger and more complex development proposals.

²⁷ Areas of inconsistency usually relate to the removal of regulated trees.

²⁸ Audit notes that TAMS Asset Acceptance Team provides an integrated response from its separate internal stakeholders to the Directorate. For example, this includes from areas responsible for transport, roads, waste and public transport.

PRE-APPLICATION

- 3.56 Applicants can request information to assist with their development of development applications from the Directorate prior to lodging a development application. Pre-application advice is provided through either a meeting or written formal advice.²⁹ The former is a free service, while written advice attracts a service fee and the advice expires six months after the day it is provided. The vast majority of pre-application advice is provided through meetings.
- 3.57 Pre-application meetings are arranged through the Directorates Customer Service Team (Applications Secretariat). They are attended by the applicant, an Directorate officer and relevant referral entities.
- 3.58 The purpose of pre-application meetings is for planning and development authorities to provide the applicant with information on compliance requirements of the proposed development to be addressed for approval of the development application. Information and advice does not constitute an approval or agreement to the proposal.

Strengthening pre-application meetings for high density residential and commercial development applications

- 3.59 The complex nature of high density residential and commercial development proposals means that early engagement of applicants is likely to result in stronger development applications. Pre-application advice provides developers the opportunity to clarify expectations and compliance requirements, identify potential issues, receive more detailed information and obtain general direction. Good advice will result in higher quality development applications and reduce the overall timeframe and cost of the development application process for both the applicant and Government.
- 3.60 The Directorate arranges pre-application meetings based on information provided by the applicant on the proposed development. This informs the Directorate of referral entities that need to be invited to the meetings.
- 3.61 Certain referral entities identified that one of the key benefits of the pre-application meeting was their ability to meet the 15 working day statutory timeframe for providing advice. For example, Heritage ACT noted that when applicants engage with the entity at the concept stage and appropriately considers heritage values then it generally meets the statutory timeframe for providing the Directorate with advice.
- 3.62 However, if the applicant has not contacted Heritage ACT prior to lodgement and the heritage value has not been considered, there are delays with the overall development application approval process.
- 3.63 There is considerable variation, however, in the quality of advice provided to applicants at pre-applications meetings, with the level of Government attendance

²⁹ Planning and Development Act 2007, Division 7.3.1, Section 138.

being a key factor. For example, Territory and Municipal Services and the Environment Protection Authority do not regularly attend pre-application meetings due to insufficient resources. In these instances, the entity either requests the Directorate to ask specific questions of the applicant on their behalf or forgoes the opportunity to engage with the applicant at the pre-application stage.

- 3.64 At times, the Directorate has inadvertently omitted inviting relevant referral entities, even though the development application impacts on assets, services or infrastructure under a referral entity's responsibility. In other instances, referral entities have attended pre-application meetings, after being informed of relevant development proposals from other referral entities.
- 3.65 Although pre-application meetings are not mandatory prior to the lodgement of a development application, they facilitate early resolution of issues or concerns that may otherwise delay or adversely affect the assessment of development applications once lodged. Pre-application engagement becomes even more important for high density residential and commercial developments, given the size and complexity of the developments, as well as to avoid significant costs incurred by the applicant due to delays in the approval process.
- 3.66 There are a number of areas where the pre-application process could be improved to better support the efficiency and effectiveness of the overall development assessment approval process. There is need to ensure attendance of all key referral entities at pre-application meetings for development applications for high density residential and commercial developments. Failure to attend reduces the overall value of this mechanism to applicants, in terms of their ability to obtain holistic advice on the development proposal prior to lodgement. This has consequent implications for all parties, where delays to early resolution of issues impacts on the resources and timeframe required to complete the development assessment process.

Recording and Monitoring of pre-application meetings

- 3.67 Internal Directorate work instructions require Case Officers to document discussions held with applicants at pre-application meetings. In addition, Pre-application guidance available on the Directorate's website states that handwritten notes are recorded at the pre-application meetings.
- 3.68 Audit found that records of pre-application meetings were being recorded and used to inform the subsequent development application process.

SYSTEMS AND WORKFLOW

- 3.69 The Directorate supports the development approval process primarily relying on two information systems – eDevelopment and Objective.
- 3.70 eDevelopment is the Directorate's online lodgement and tracking system for all development applications.
- 3.71 Objective is an integrated document management system used across the Directorate and, to a certain extent, across other Directorates.³⁰ All of the Directorates electronic records, including those relating to development applications, are stored on Objective.³¹ Hard copy files are electronically managed through the system, with electronic copies made and stored in Objective. The Directorate relies on Objective as the key and single source for all of its information.
- 3.72 The eDevelopment system interfaces with Objective and automatically uploads all records from eDevelopment into Objective, using standardised naming conventions and folder structures. This means that all information and records relating to a development application are stored electronically on Objective, including all plans and information supporting the application.
- 3.73 Although Objective is considered the 'single source of truth', Audit noted during the examination of a sample of high density residential and commercial development applications, notes and records relating to pre-application meetings were not consistently documented in Objective.

Manual handling of development application documentation

- 3.74 Within the Directorate, Objective is used to record and share information relating to a development application among internal agency stakeholders, such as Customer Service, Merit Assessment Team, Leasing Team and individual Case Officers. The information is shared through Objective references, that is, links sent via email to individual users to access the electronic records of a specific development application stored in Objective.
- 3.75 The key external referral entities have different levels of access to Objective. Being located within the Directorate, the Conservator of Flora and Fauna has access to Objective. Territory and Municipal Services, the Environment Protection Authority and Heritage ACT also have access to Objective, but only to a limited number of documents, with read-only access and an inability to store documents on Objective. Commonwealth and non-government referral entities have no access to Objective, such as ActewAGL and the National Capital Authority.

³⁰ Objective is the ACT Government's integrated document management system that was implemented as a pilot within the Directorate, with an expectation for expansion across the other Government Directorates. Various other Directorates have limited access to Objective, although access is not universal across Directorates.

³¹ Note, applicants do not have access to Objective.

- 3.76 Once Case Officers identify referral entities, the Directorate's Customer Service Team refers development applications to relevant entities primarily via email. The emails specify the location (block and section), provide a brief description of the development proposal, state the timeframe within which the entity must respond and provide the Objective reference to the electronic development application records. In the case of Commonwealth and non-government referral entities, the Directorate sends electronic attachments of all relevant development application documentation in the referral email.³²
- 3.77 Referral entities provide responses electronically via email to the Directorate, with the supporting documentation saved to Objective as records of the referral entity response.
- 3.78 The limited access of referral entities to Objective creates inefficiencies. This results in the need for manual handling of development application information and the inability to access information in a timely manner. For example, as a coordination point for entity referrals within Territory and Municipal Services, the Asset Acceptance Team must print the referred development application documentation and circulate it in hardcopy to a range of internal stakeholders who do not have access to Objective, such as transport, roads, waste and public transport.
- 3.79 For the manual process, there is also a risk that assessment information will not be formally captured in development application records. This is particularly the case for entities that have had large and complex high density residential and commercial development proposals referred to them, due to the need to coordinate large volumes of documentation. Inadequate transfer of all development application records to Objective limits the security of information in the development application process.

eDevelopment

- 3.80 The eDevelopment system workflows the entire development approval process and is used by the Directorate to monitor and report development assessment statistics, track progress of development applications, allocate and refer tasks to internal stakeholders, and communicate with applicants.
- 3.81 As referral entities do not have access to eDevelopment, the Directorate relies on email exchanges to support the sharing of information. This only occurs after eDevelopment has automatically uploaded relevant documents through to Objective. The process also depends upon the Directorate manually saving electronic copies of emailed advice from referral entities to Objective.

³² In instances where the electronic records relating to the DA are too large to attach to an email, the documentation is recorded on a CD and posted to the entity.

- 3.82 Reliance on email in this manner, however, creates several risks for the referral process, such as:
- causing delays between the receipt of development application documentation from developers and their communication to relevant referral entities. This reduces the amount of time available within the statutory timeframes for the Directorate to amalgamate advice in order to finalise the Notice of Decision;
 - increasing potential for loss of documentation and information. In one instance the Directorate followed up the need for advice from a referral entity only to find that the advice had already been received some two months earlier. Entities also advised of other instances where referrals and communications between parties were lost, thereby leading to delays in the referral process; and
 - inhibiting the Directorate in monitoring the 15 working day statutory timeframe for receiving referral entity advice. While the Directorate is able to monitor the total length of individual development application processes in eDevelopment, the system does not have the facility to refer, track and manage entity referrals. As a result, Case Officers are responsible for manually tracking progress development applications, including managing the timeliness of entity advice.
- 3.83 The lack of access to eDevelopment also affects the capacity of referral entities to manage the provision of timely advice. Some have established internal databases to track referrals. For example, Territory and Municipal services maintains Microsoft Excel worksheets to track referrals, while the Environment Protection Authority uses a local Microsoft Access Database.
- 3.84 The Directorate has prioritised the automation of the entity referral process within eDevelopment, which will result in referral entities having access to the system. Stakeholders indicated that Territory and Municipal Services, the largest referral had anticipated having full access to eDevelopment by the end of June 2012. However, this seems unlikely due to technical matters. It's now anticipated that the system will be fully implemented by December 2012.

Recommendation 2 (Chapter 3 – 'One Government' Approach)

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;
- developing 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) in specifying roles and responsibilities.)

4. PERFORMANCE AND GOVERNANCE

4.1 In this chapter the performance of the ACT development application and approval system in deciding high density residential and commercial developments within legislated timeframes is considered. In addition, the extent to which the Directorate's external accountability reporting, key performance indicators and performance information, and internal working arrangements support the achievement of statutory timeframes is also considered.

SUMMARY

Conclusion

The Environment and Sustainable Development Directorate did not meet the statutory processing timeframes of 30 and 45 days for high density residential and commercial developments in the majority (85%) of complex development applications reviewed by Audit. Given that the statutory timeframes for residential and commercial development applications is significantly shorter than what is actually being achieved, it seems that a review is warranted. Existing timeframes maybe aspirational. More achievable timeframes will provide greater certainty for the community and developers.

Public reporting on the development application and approval system by the Directorate should be strengthened through sharper, more precise external accountability indicators and internal performance measures for the assessment of complex development applications. In addition, the capture of specific and robust qualitative and quantitative performance information, and associated monitoring and reporting, for high density residential and commercial developments should foster a drive for greater continuous improvement in the approval system.

A review of the Directorate's Major Projects Review Group and Executive Policy Committee will streamline the internal referrals process and likely improve the overall assessment and approval times of complex development applications.

Key Findings

- The statutory timeframes for deciding development proposals place a legislative responsibility on the Directorate in assessing development applications prior to deemed refusal, and also provides applicants and the ACT community with some certainty over the length of the development application approval process. Failure to meet the statutory timeframes may result in significant costs to industry, Government and the community through reputational risks, holding and transactions costs and delayed access to the benefits of new developments.
- The Directorate has a statutory obligation under the *Planning and Development Act 2007* to decide high density residential and commercial developments within a prescribed timeframe of 30 or 45 days (noting that mechanisms exist under the *Act* to extend these

timeframes). In a sample of high density residential and commercial development proposal examined in this audit, the Directorate was found to have decided development applications outside the statutory timeframes in 21 of the 25 (85%) of the applications reviewed.³³

- In examining a sample of high density residential and commercial development proposals, Audit found that on average, the sampled development applications were decided in approximately 78 working days, 33 days beyond the upper timeframe for merit assessed development proposals.
- Although the Act legislates timeframes for deciding a development application before it becomes appealable as a deemed refusal, the Directorate's external accountability indicator, reported to Government and the community, for the percentage of development application decisions made within time is only 75%. This means that there is an acceptance by the Directorate that 25% of all merit assessed development applications are unlikely to be decided within the statutory timeframes.
- The current accountability indicators for the Directorate provide Government and the community with only a consolidated view of all processing times for merit track development proposals and do not discriminate between the different types of developments within the merit track. This may conceal or distort the Directorate's true performance in processing high density residential and commercial development applications.
- The current working arrangements for the assessment of merit track development proposals results in a reactionary approach to processing development applications. High density residential and commercial development applications warrant a proactive approach to processing by the Directorate's Case Officers.
- Although considered a valuable mechanism for providing assurance over development application decisions by senior Directorate stakeholders, the internal referrals to Major Projects Review Group and Executive Policy Committee can lead to delays in the development application approval process due to the volume of development applications referred and the frequency of committee meetings.
- The Directorate has an internal quality assurance program and while this valuable, there is also need for its internal audit program to cover the development application process.

³³ Based on information and records available in Directorate's Objective document management system

PERFORMANCE AGAINST STATUTORY TIMEFRAMES

- 4.2 The Planning and Development Act 2007 (the Act) establishes statutory timeframes within which development applications must be decided by the Directorate.³⁴ The statutory timeframes are supported by external accountability indicators, reported to the ACT Government and community, as well as internal performance measures, intended to drive continuous improvement in the development application approval process.
- 4.3 To provide applicants and the community with some certainty over the timing of the development application approval process, the Act imposes a statutory timeframe for the Directorate to decide a development application. The prescribed period for deciding an application for a development proposal depends on the assessment track that applies for the proposal.
- 4.4 In accordance with the Act, a development application for a development proposal in the merit track must be decided not later than:
- 30 working days after the date of lodgement with the Directorate if no representations are made in relation to the proposal; or
 - 45 working days after the date of lodgement with the Directorate if any representations are made.³⁵
- 4.5 The Act contains provisions to extend the statutory time for deciding development applications, such as due to requests for further information and amendments to the application.³⁶ The Act stipulates the extension period in each instance, however there are no set timeframes for the extensions, with the period dependent on when certain actions are taken by the Directorate and applicant.
- 4.6 Consequently it is possible under certain circumstances for a development application to be decided beyond 30 or 45 working days and still be decided in time.
- 4.7 Where a development application is not decided by the Directorate or the Minister within the prescribed time period, the Directorate is taken to have refused the application (this is known as deemed refusal).³⁷ However, despite

³⁴ Or the Minister for DAs in situations where the Minister decides to consider under Division 7.3.5 of the *Planning and Development Act 2007*

³⁵ Planning and Development Act 2007, Division 7.2.4, Section 122.

A representation in the context of the DA approval process is taken to mean a written representation made by any person in relation to the development proposal. Furthermore, a DA is only considered lodged once all fees associated with the application have been received by the Directorate.

³⁶ The provisions for extensions of time for deciding a development application is provided in Division 7.3.7, Part 7.3, Chapter 7 of the Planning and Development Act 2007. The statutory timeframes can be extended in four instances: for further information-further information sufficient (s166), for further information-further information insufficient (s167), for further information-no further information given (s168) and application amended (s169).

³⁷ Planning and Development Act 2007, Division 7.3.6, Section 163(3).

the ending of time for deciding a development application, the *Act* allows the Directorate or the Minister to approve or approve subject to conditions the development application.³⁸

Timeliness of High Density Residential and Commercial Development Application Approval Decisions

- 4.8 High density residential and commercial development proposals are predominantly assessed under the merit track. Consequently, the Directorate has a statutory obligation to decide such development proposals within 30 or 45 working days from the date of lodgement.
- 4.9 Due to their size, prominence and location, high density residential and commercial developments generally attract representations from the community and, in some cases, industry stakeholders. As a result the statutory timeframe for these complex development applications is typically around 45 working days.
- 4.10 During the 2010-2011 financial year, the Directorate achieved an average of 73.5% for all merit track development proposals within the statutory timeframes of 30 or 45 working days.
- 4.11 In examining a sample of high density residential and commercial development proposals, Audit noted that the Directorate did not decide development applications within the statutory timeframes in 21 of the 25 (85%) of the applications reviewed. On average, the sampled development applications were decided in approximately 78 working days, 33 days beyond the upper timeframe for merit assessed development proposals.³⁹
- 4.12 This is consistent with observations made by industry stakeholders who stated that high density residential and commercial development applications are traditionally not decided within the statutory timeframes of 30 or 45 days. The overwhelming view held by industry representatives and developers was that such development applications take significantly longer than 45 working days to decide due to their size, complexity and the number of referral entity and community stakeholders involved.
- For example, one developer indicated that for internal planning purposes they may set aside six to nine months to obtain development approval for large high density residential and commercial developments.
- 4.13 Failure to meet the statutory timeframes for deciding high density residential and commercial development applications diminishes the certainty provided to the applicant and the community under the *Act* and can result in considerable

38 Planning and Development Act 2007, Division 7.3.6, Section 163(2).

39 Testing performed in assessing development application compliance with the statutory timeframes of the Planning and Development Act 2007 was based on information and records available in Directorate's Objective document management system

costs to industry, Government and the ACT community. This includes reputational risks for the Directorate, holding and transaction costs for the applicant and delays in realising the benefits of new developments for the community.

- 4.14 While Audit considers that there are opportunities to improve the current development application approval system to better facilitate the achievement of statutory timeframes for deciding development applications, given that the statutory timeframes for high density residential and commercial development applications are significantly shorter than that which seems possible, it seems that a review of the appropriateness of these timeframes is warranted. Existing timeframes appear to be aspirational. More achievable timeframes will provide greater certainty for the community and developers.

EXTERNAL ACCOUNTABILITY REPORTING

- 4.15 ACT Government Directorates and agencies formally report against performance indicators and targets to demonstrate transparency and accountability for organisational performance to Government and the community. Such accountability indicators measure an agency's effectiveness and efficiency in delivering outputs and outcomes for the ACT. Where appropriate, they may also include input measures that report to Government the costs of individual services.
- 4.16 Accountability performance indicators are defined through the budget process for Government agencies and are included in annual Statements of Performance. These are provided with the financial statements for the agency and are subject to review by the ACT Auditor-General's Office.
- 4.17 The achievement or continuous improvement towards accountability indicators supports good governance by ensuring the efficient and effective delivery of Government services. The Directorate is required to present in their Statement of Performance the respective accountability indicators defined in budget papers. This includes the accountability indicator, the original target for the financial year, the actual result for the period and the variance. The Statement of Performance also includes strategic performance measures which define qualitative outputs and outcomes.
- 4.18 The Directorate is obliged to collect adequate performance information to account for the accountability indicators and demonstrate transparency to Government and the ACT community.
- 4.19 The 2010-11 Statement of Performance for ACTPLA (the planning and land authority within the Directorate), included the following accountability indicators in relation to development application processing times:⁴⁰

⁴⁰ ACTPLA Annual Report 2010-11, pg. 104.

Table 4.1: Accountability Targets and Results

Accountability Indicator	Original Target	Actual Results
Average processing time in working days	40	44
Median processing time in working days	35	30
Percentage of development application decisions made within statutory timeframe	75%	73%

- 4.20 The accountability indicators relate to the Directorate’s processing times for all merit track development applications. As previously mentioned, the *Act* prescribes a statutory timeframe of 30 days (for development proposals with no representations) or 45 days (for all other development proposals) to decide a merit track development application.
- 4.21 Although the *Act* legislates timeframes for deciding a development application before it becomes appealable as a deemed refusal, the Directorate’s accountability indicator for the percentage of development application decisions made within time is only 75%. Consequently there is an acknowledgement by the Directorate that 25% of all merit assessed development applications are unlikely to be decided within the legislated time frames due to their complexity.
- 4.22 While it may be considered more appropriate for the target indicator to be 100% to reflect the statutory nature of the time frame, the Directorate has set the target for what it considers a reasonable number of development applications that should be decided before deemed refusal occurs. This is based on its experience in assessing development applications and recognition that the *Act* prescribes a number of circumstances which enable statutory timeframes to be extended to cover issues that are outside the Directorate’s control, such as incomplete applications, non-compliance with the *Territory Plan* and amendments or corrections to applications.
- 4.23 The current accountability indicators for the Directorate provide Government and the community with only a consolidated view of all processing times for merit track development proposals and do not discriminate between the different types of developments within the merit track, such as high density residential and commercial development applications. Consequently the indicators do not differentiate between the time taken to decide a simple development proposal, such as a low-rise single occupancy dwelling, and a large scale complex high density development, such as a 60 unit mixed-use development.
- 4.24 The distinction between different types of developments is particularly important given that high density residential and commercial development

proposals are traditionally decided beyond the statutory timeframes. As such complex development applications come under closer scrutiny by Government and the community as they generally represent significant or prominent developments, attract broader community interest and contribute close to one-third of the total cost of works for all development applications in the ACT.

- 4.25 The consolidated development application accountability indicators may also serve to distort reporting of the Directorate's true performance in processing high density residential and commercial development applications. Smaller or less complex development proposals, such as extensions/additions to dwellings, signage and lease variations are likely to take less time to process and consequently compensate for the time taken by large high density residential or commercial development applications which are typically assessed outside the statutory timeframes.
- 4.26 Specific and differentiated accountability indicators for the processing of merit assessed development proposals, provides Government and the community with transparent and accurate measures of performance in deciding high density residential and commercial development applications.

INTERNAL PERFORMANCE MONITORING AND REPORTING

- 4.27 Robust performance information in relation to the efficiency and effectiveness of a program or function allows management to make sound, evidence-based judgements on the success, shortcomings and future directions of the program. Such performance information can also inform organisational decision-making in regard to the allocation of financial and human resources to the program.
- 4.28 Government agencies are required to collect reliable and appropriate performance information to account to Government and the community on the efficiency and effectiveness of programs. Performance information is a key tool for driving continuous improvement within an organisation.
- 4.29 Key Performance Indicators (KPIs) are established to provide qualitative and quantitative information to key stakeholders on the performance of programs and functions in supporting organisational objectives and outcomes.

KPIs for deciding high density residential and commercial development applications

- 4.30 The Directorate currently applies an internal KPI of '75% of development application decisions made within statutory time frames', for monitoring and reporting performance in the assessment of all merit track development applications. This performance measure is the same as their external accountability indicator for development application processing time reported in the Directorate's Statement of Performance and Annual Report.
- 4.31 The KPI is monitored by management through internal weekly and monthly reporting which contains performance information on the timeliness of all merit track development applications currently in the approval system, as well as some

historical information. The 75% KPI is also used to monitor the performance of internal and external stakeholders involved in the development application approval process. For example when performance falls below the 75% average, the Directorate will escalate concerns with stakeholders to identify issues or impediments in the approval system

- 4.32 The Directorate's use of the external accountability indicator as the internal measure for processing development applications, results in similar deficiencies as with accountability indicator previously discussed. The '75% of development applications decisions made within statutory time frames' performance indicator does not appropriately reflect that the time frames for deciding a development application are legislated under the *Act* and that the Directorate is therefore obliged to achieve these for all merit assessed development applications.
- 4.33 The current consolidated key performance indicator for all development applications does not distinguish between the different types of merit assessed development applications, such as high density residential and commercial developments. In the absence of differentiated or graded performance indicators, the Directorate does not have any specific performance measures for deciding high density residential and commercial development applications. Furthermore, there is no active monitoring or periodic reporting by the Directorate's management of such complex development applications. Consequently the Directorate does not explicitly recognise the additional complexity, time, resources and risk involved in assessing high density residential and commercial development applications over other merit track development proposals.
- 4.34 Without any specific key performance indicators for processing complex development applications, the Directorate's staff are not provided with any guidance or measures in regard to the target processing time and quality for high density residential and commercial development applications. In addition, there are limited performance indicators that the Directorate's management can use to monitor and drive performance of Case Officers who manage the assessment of complex development applications.
- 4.35 A single KPI for all merit assessed development applications also results in an overly simplistic indicator that does not offer the Directorate with adequate or holistic performance information in relation to the efficiency and effectiveness of the development approval system. The measure only addresses a specific aspect of timeliness, but does not capture other quantitative characteristics of the approval process such as the timeliness of entity referrals, internal stakeholder referrals and public notifications. In addition, the current KPI is too narrow to capture the qualitative elements of the development application approval process, such as the quality of the approval decision, the accuracy and completeness of the Notice of Decision, adequacy of cross-agency collaboration, integration of ecologically sustainable development and urban design principles and stakeholder management.

- 4.36 Without any specific or robust quantitative and qualitative key performance indicators for the assessment of high density residential and commercial development applications, the Directorate does not capture adequate performance information to account to Government and the community on the efficiency and effectiveness of the development application approval process for complex applications. In addition, the Directorate does not have reliable and appropriate performance information to inform organisational decision-making, drive continuous improvement or to make evidence-based decisions on the success, shortcoming or appropriateness of the development approval assessment framework.

Recommendation 3 (Chapter 4 – Performance and Governance)

A review of statutory timeframes for deciding a high density residential or commercial development should be undertaken and improvements made to the associated accountability indicators, by:

- Reviewing the aspirational statutory timeframes stated within the Planning and Development Act for high density residential and commercial developments;
- Segregate and appropriately align quantitative external accountability indicators for high density residential and commercial developments; and
- Develop specific internal quantitative and qualitative accountability indicators for high density residential and commercial developments.

EFFICIENCY AND EFFECTIVENESS OF WORKING ARRANGEMENTS

Background

- 4.37 The process for deciding a development proposal under the merit assessment track is defined and documented by the Directorate in a suite of internal policy and procedural documents as well as guidance material available on the Directorate’s website. A number of internal standard operating procedures and work instructions detail the workflow of a development application, including lodgement, initial assessment, public notification, internal and entity referrals and quality assurance.
- 4.38 The coordination, timing and approach to undertaking the key stages of the development application approval process have an impact on the Directorate’s efficiency and effectiveness in deciding high density residential and commercial development proposals.

Approach to assessing complex development assessments

- 4.39 The allocation of development applications to Directorate Case Officers for assessment is undertaken at the pre-application stage and following lodgement of the development application through eDevelopment. When a pre-application meeting is requested by the applicant, a Merit Assessment Team Leader will

nominate a Case Officer to attend the meeting, based on factors such as the type, scale and location of the proposed development and the availability of Case Officers. Where a pre-application meeting does not occur the development application is allocated upon submission to a Case Officer.

- 4.40 Following allocation of the development application, the assigned Case Officer is responsible for progressing the development proposal through the key elements of the development application approval process, including initial assessments, entity referrals, public notification, internal referrals and assessment of application and notice decision. The assessment process is broadly consistent for all development proposals under the merit track, with the breadth and detail of public notification and internal and external referrals greater for complex development applications.
- 4.41 When assessing a development application, the Case Officer can undertake discrete elements of the approval process in parallel to improve the timeliness of the process. For example, while a development application is released for public notification or entity referral, the Case Officer can conduct their assessment of the development proposals against the relevant codes of the *Territory Plan*.
- 4.42 A Directorate's Case Officer will typically be responsible for assessing a number of development applications at any one point in time, including development proposals of varying scale and complexity. Case Officers will have development applications within their assessment portfolio at various stages of the assessment process. As the number and complexity of development applications increase, there is greater reliance on the appropriate phasing and coordination of development applications to ensure overall timeliness of processing.
- 4.43 The current working arrangements for the assessment of merit track development proposals results in a reactive approach to processing development applications. Case Officers will initiate particular stages of the assessment process for an individual development, such as entity referrals, and will then undertake another assessment while they wait for responses or action by relevant parties. During this time the development application is not actively progressed by the Case Officer which can lead to delays in the approval process and the perception of administrative drift by applicants and the community. This practice has considerable implications on high density residential and commercial development applications, where due to their complexity, there are a larger number of internal and external stakeholders who must be actively managed to ensure a timely assessment outcome.
- 4.44 The allocation of multiple development applications to individual Case Officers presents challenges for officers in making themselves available and responsive to stakeholders, as well as being adequately informed and accountable for the development applications they manage. For example, working on a number of complex development applications inhibits the officer's ability to respond to applicants, referral entities, community and internal stakeholder queries or

action items in a timely manner. This leads to observations by industry and referral entities that there is no dedicated contact officer accountable for the individual development proposal.

- 4.45 High density residential and commercial development applications warrant a more proactive approach to processing by Case Officers that actively manages complex development applications through the approval system to support the achievement of statutory timeframes and eliminate perceptions of administrative drift in the process. Such an approach may also encourage seamless service delivery across Government through greater coordination and collaboration with referral entities, overcoming the inefficiencies of silo-based decision-making described earlier in this report.
- 4.46 While it is respected that there will always be limitations in the number of Case Officers available to assess high density residential and commercial development proposals, given the inefficiencies associated with not having a continuous management approach for assessing complex development applications, it is appropriate for work practices to be reviewed to identify ways in which a more proactive approach to assessment can be achieved.

Recommendation 4 (Chapter 4 – Performance and Governance)

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.

Internal Directorate Referrals

- 4.47 To provide greater oversight and assurance over development assessment decisions for complex and high risk projects, the Directorate has established two senior internal governance committees - the Major Projects Review Group (MPRG) and the Executive Policy Committee (EPC). Membership is restricted to the Directorate's internal staff only.
- 4.48 The Major Projects Review Group provides an agency wide perspective on complex development proposals and consists of the Executive Director - Planning Delivery, Managers - Development Assessment, Manager - Design Policy, Conservator Liaison and may include the Technical Coordinator - Leasing and other relevant section managers or technical coordinators from within the Directorate. There are a number of defined conditions which trigger a mandatory internal referral of the development application to this group, including:⁴¹

⁴¹ According to ESDD Work Instructions for Internal Referrals

- the application is required to be referred to the Executive Policy Committee;
 - where the community have raised issues with the Minister;
 - the development proposal raises a major policy issue;
 - the development proposal has received ten or more representations; or
 - it is proposed to grant an approval that would be inconsistent with any advice given by an entity to which the application was referred under division 7.3.3 of the *Act* (this does not include non-mandatory referrals).
- 4.49 The role of the Executive Policy Committee is to provide high level advice on special development proposals. Membership includes the Directorate's Director General, Executive Director Planning Delivery, Executive Director Regulation and Services, Executive Director City Planning and the Director of Construction Services. The following circumstances will trigger a referral to this committee:
- a residential building intended to be higher than 3 storeys and consisting of more than 50 units;
 - a building the total floor space of which is intended to be more than 7000m²;
 - a building or structure intended to be higher than 25m;
 - if it is proposed to grant an approval that would be inconsistent with any advice given for regulated trees and/or Heritage; or
 - an application to change a concessional lease into a lease that is not a concessional.
- 4.50 Generally high density residential and commercial development applications will trigger a referral to one, if not both, of these groups due to the nature, size and complexity of the development.
- 4.51 Both the Major Projects Review Group and the Executive Policy Committee meet on a weekly basis to consider development applications. Prior to tabling a development application at a Major Projects Review Group or the Executive Policy Committee meeting, the Case Officer must prepare and submit a brief three days in advance of the meeting, which summaries the key issues associated with the development application.
- 4.52 Due to the breadth of triggers for mandatory internal referrals to the Major Projects Review Group and the Executive Policy Committee, there are often a number of development applications which must be referred to one or both of these committees. As the Major Projects Review Group and the Executive Policy Committee meet weekly basis for a defined period of time, there are instances where referral backlogs occur, which are compounded during peak periods. In addition, the pre-briefing requirements for Major Projects Review Group and the

Executive Policy Committee can result in submissions missing the cut-off for the next meeting and consequently being deferred to a later sitting.

- 4.53 Internal referrals to Major Projects Review Group and the Executive Policy Committee occur only after the Case Officer has concluded their assessment and have received all entity advice and community representations. Consequently the Major Projects Review Group and the Executive Policy Committee are particularly important in the development application process. Neither the Major Projects Review Group nor the Executive Policy Committee have formal Terms of Reference that define their objective, scope and administrative responsibilities. The purpose and membership of each committee is briefly documented in an internal Directorate Work Instruction,⁴² however this instruction does not provide guidance on the operational aspects of the committees. Consequently there is an absence of formal administrative rules for the Major Projects Review Group and the Executive Policy Committee which should include specifying timeframes for committee decision-making, processes for the management of critical or significant referrals and the consideration of referrals out-of-session.
- 4.54 Although considered a valuable mechanism for providing assurance over development application processes, decisions by senior Directorate stakeholders, the internal referrals to Major Projects Review Group and the Executive Policy Committee can lead to delays in the development application approval process due to the volume of development applications referred and the frequency of committee meetings. There have been instances where these delays have resulted in development proposals being held up for a number of weeks waiting for consideration at Major Projects Review Group and the Executive Policy Committee. For high density residential and commercial developments, such practices can lead to approval decisions being made outside the statutory timeframes and significant costs being incurred by the applicant.
- 4.55 Both the Major Projects Review Group and the Executive Policy Committee consist of staff from within the Directorate. Given the complex nature of many high density residential and commercial developments, there seems to be merit in having people who have particular expertise and who are external to the Directorate, to be on these committees. The merits of having people on these committees who are not part of the Directorate, for example, the Territory's Architect, chair of the Heritage Council and the Commissioner for Sustainability and the Environment, needs to be explored for more complex development applications .
- 4.56 There is no current established working group or forum where senior officials from all referral entities meet to discuss a 'One Government' approach to planning and development issues. Meetings are held between officers on an individual application basis but not from a system wide; strategy, planning and

⁴² ESDD Work Instruction - Internal Referrals (revision 9.0)

business improvement basis. Such a forum could provide advice to the Executive Policy Committee.

- 4.57 The Directorate and the Territory and Municipal Services Directorate often hold Industry forums and discussions separately to one another, with a possible risk of inefficiencies in Government effort and possible conflicting advice to Industry.
- 4.58 The benefits of having a Planning and Development Forum with representatives from all referral entities and relevant ACT Government policy areas need to be considered. It could be tasked with advising the Executive Policy Committee on, amongst other things:
- the availability, consistency and quality of information provided to the ACT Community and Industry on the development application process via ACT Government websites, publications and social media;
 - coordination and integrated approaches for providing information to the community and industry;
 - systemic issues in the referral entity process; and
 - ways to service improvements to enhance a 'One Government' approach in the development application process.

Quality Assurance

- 4.59 To provide assurance over the Government's development application and approval system, the Directorate has established an internal quality assurance (QA) program. Implemented in August 2009 for the purposes of establishing ongoing business process reviews over development assessment activities, the quality assurance program seeks to ensure continuous improvement and provide management with assurance that sufficient controls are in place and these are being adequately followed. The quality assurance program covers all development applications, including code, merit and impact track assessments. There are 11 quality assurance reviews scheduled during the 2011-12 financial year, ranging from 5 to 12 days in duration.⁴³ The quality assurance is undertaken by staff of the Directorate.
- 4.60 The quality assurance program is intended to complement the Directorate's internal audit program. The Directorate has an annual internal audit work program formulated by the Directorate's Audit Committee which is based on an assessment of past audit programs, risk management plans, sectional risk registers and other emerging issues of concern for Government.⁴⁴ The internal audit program provides assurance to the Directorate's Executive and Minister on the effectiveness of the Directorate's management process and internal controls.

⁴³ Planning and Delivery Quality Assurance Business Plan (August 2011 – June 2012)

⁴⁴ ACTPLA Annual Report 2010-11, pg. 166.

- 4.61 In the past three financial years, there has not been any Directorate internal audits conducted that have specifically examined the integrity of the development application and approval process. This is despite a large planning reform program, key legislative obligations, continual scrutiny from community and industry, and significant reputational risks associated with development application assessments performance. Consequently internal audit has limited oversight of the development application process, with the exception of quality assurance reports produced following each review which are provided to the Manager of Internal Audit and the Directorate Audit Committee for information purposes only.
- 4.62 The absence of internal audit coverage over the development application process appears to be due to the existence of the quality assurance program and a perception that assurance provided through the quality assurance function precludes the need for additional internal audit activity. However, the quality assurance program does not offer an equivalent level of assurance to that provided by internal audit. The quality assurance reports reviewed during this audit were modest in scope and detail, and offered only a limited degree of assurance to the Directorate Executive that controls over the quality assurance approval process were operating effectively. Furthermore, audits are usually undertaken by professionals that are independent of the Directorate whereas the quality assurance is undertaken by Directorate staff. While they are important and should be continued, an independent view is needed.
- 4.63 Given the importance of the development application process it is considered inappropriate that not one internal audit has been undertaken by the Directorate on its development application processes within the past three years.

Recommendation 5 (Chapter 4 – Performance and Governance)

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 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.

5. ENVIRONMENTALLY SUSTAINABLE DEVELOPMENT AND URBAN DESIGN

5.1 This Chapter presents the findings of an examination of whether the principles of environmentally sustainable development and urban design have been effectively integrated into the ACT development application and approval system for high density residential and commercial developments.

SUMMARY

Conclusion

The Directorate has not fully integrated environmentally sustainable development and urban design principles into development application processes for high density residential and commercial developments. This needs to be addressed through a review of Policy and the provision of relevant information and guidance for developers, referral entities and Directorate Case Officers involved in supporting the development application process.

Key Findings

- The *Territory Plan* sets the strategic direction for planning and development in the ACT. Key directions are environmental sustainability and high quality, creative design. With respect to the latter, it sets clear goals to preserve Canberra's 'garden city' and 'bush capital' qualities, and expects urban design to acknowledge Canberra as the national capital.
- The Directorate has identified at a high level how the principles of environmental sustainability can be built into planning and development activities. The Directorate has integrated some of these into the development application process. For example, development proposals are assessed under the 'Waterways Water: Sensitive Urban Design General Code' of the *Territory Plan*. The Directorate continues to receive and incorporate expert advice from referral entities with environmental responsibilities.
- There is a need to identify the full suite of potential environmental sustainability issues for development applications, and to integrate these into the development applications process. This applies to both the Directorates responsibilities and referral entities, given that environmentally sustainable development cuts across the responsibilities of all areas of Government.
- There is limited guidance for Case Officers involved in advising applicants and assessing development applications against the urban design principles of the *Canberra Spatial Plan*. Although not a statutory requirement, the Canberra Spatial Plan sets out the ACT Government's strategic development of Canberra over the next 30 years.
- The limited guidance is reflected in the 25 sampled development applications examined by Audit where the majority of assessments did not include urban design

considerations. The only exception was one large-scale development proposal.

- The Directorate has provided only limited information on its website to encourage development proposals that meet Government and community expectations regarding urban design principles, both in relation to the ACT as a place to live and in acknowledgement of Canberra as the national capital. In the absence of integrated urban design principles in the development application process, developments may be approved that are technically compliant but that may not necessarily achieve the goals of the *Territory Plan*.
- A review of policy and the development of a guideline, or something similar is needed for the application of the principles of environmentally sustainable development and achieves high quality urban design for high density residential and commercial developments. Such a review and development of a guide could be developed by the Directorate in partnership with the Territory Architect and in consultation with referral entities.

BACKGROUND

- 5.2 The Government and community expect environmentally sustainable development and high quality urban design that maintains the National Capital as an exemplar of best practice. Consistent with their importance, Environmentally Sustainable Development and urban design are stated as key strategic directions of the Territory Plan.
- 5.3 The Territory Plan sets the strategic direction for planning and development in the ACT. Key directions are environmental sustainability and high quality, creative design.
- 5.4 The Territory Plan adopts a ‘triple bottom line’ approach to planning and development, involving consideration of environmental sustainability.⁴⁵ The overarching principles of sustainable development require efficient use of resources, reduced consumption of non-renewable resources, maximum accessibility and transport efficiency, water sensitive urban design, and minimum pollution.
- 5.5 The spatial planning and urban design principles give a focus on high quality, creative design of development, with encouragement of innovation in keeping with the National Capital as an exemplar of best practice.⁴⁶ This is within the context of a framework that encourages and facilitates population growth for the Canberra-Queanbeyan metropolitan area of up to half a million people.

⁴⁵ Triple bottom line includes consideration of economic, social and environmental considerations, with the *Territory Plan* having combined achievement of economic vitality, community wellbeing and environmental quality as a planning principle. See *Territory Plan*, General Principles, p. 1, para. 1.1.

⁴⁶ *Territory Plan*, Urban Design, p. 6.

- 5.6 The specific strategies, policies and activities required to achieve this goal are set out in the Canberra Spatial Plan, which is a living document in the sense that the Government expects it to evolve to meet changing community values over time.

ENVIRONMENTALLY SUSTAINABLE DEVELOPMENT

- 5.7 In addition to the principles of sustainable development under the *Territory Plan*, the Directorate has a statutory requirement to consider the probable impact of proposed developments on the environment.
- 5.8 The requirement covers consideration of the nature, extent and significance of those impacts.⁴⁷ The Directorate is further required to report on its performance against the principles of environmental sustainable development annually, under the *Environmental Protection Act 1997* and the Chief Minister's Annual Report Directions.
- 5.9 The Directorate has identified at a high level how the principles of environmental sustainability can be built into planning and development activities⁴⁸. Those that apply to high density residential and commercial developments include:
- minimising impact on biodiversity through appropriate design and siting of buildings;
 - reducing greenhouse gas emissions by locating buildings close to public transport facilities and providing for walking and cycling facilities;
 - reducing emissions of greenhouse gases through energy efficiency measures and through use of renewable energy;
 - reducing potable water use and recycling water where appropriate;
 - reducing stormwater runoff;
 - improving indoor air quality; and
 - using sustainable building products.
- 5.10 The Directorate has integrated some of these into the development application process. For example, development proposals are assessed under the Waterways Water Sensitive Urban Design General Code of the Territory Plan. The code provides a method for implementing water sensitive urban design to assist in achieving specific targets in the ACT Government's 'think water, act water' strategy. The Directorate Case Officers undertake the assessment of the development proposal against the general code, with large scale or complex developments referred to the internal Infrastructure Policy Team, who have expertise in water management.

⁴⁷ Planning and Development Act 2007, Division 7.2.3, Section 120(f).

⁴⁸ ESDD Sustainable Design [http://www.actpla.act.gov.au/topics/design_build/siting/sustainability]

- 5.11 There is an understandable reliance on referral entities to assess and provide advice on environmental sustainability issues as part of the current development application referral process. This includes advice from the Conservator of Flora and Fauna in respect of nature conservation and regulated or registered trees; the Environment Protection Authority in relation to waste water, air, contaminated sites, hazardous material, noise and water quality; and, Heritage ACT in respect of the conservation of cultural, natural and Aboriginal heritage assets.
- 5.12 The National COAG commitment views environmental sustainability, more appropriately considered at the building approval stage, i.e. following the development assessment approval process. It is at this point that such issues as energy efficiency and waste management would be considered as part of the building approval process. For example, a building approval would be accompanied by an energy efficiency rating that takes into account the materials and internal fittings used in construction.
- 5.13 Consistent with this view, the Directorate has not developed any specific guidance for Case Officers to consider any further environmental impacts of high density residential and commercial development applications. As a result, Case Officers do not effectively assess the impacts of proposed developments with respect to environmental sustainability. This was reflected in the 25 sample development applications considered in this audit.
- 5.14 There is a need, however, to identify the full suite of potential environmental sustainability issues for development applications, and to integrate these into the development applications process. This applies to both the Directorates responsibilities and referral entities, given that environmentally sustainable development cuts across the responsibilities of all areas of Government.
- 5.15 In this respect, the Directorate has made limited progress since the previous Auditor General's Audit report in 2005.⁴⁹ The report found that the Authority had not defined 'sustainable' development and, associated with this, had not developed policies and guidelines for applicants and staff.
- 5.16 Until such time as environmentally sustainable development is integrated into the development application process, the ACT Government and community cannot be assured that all actions are being progressed to foster sustainable practices. Given the important role of Case Officers and referral entities, providing training for them, supported by documentation on how to integrate environmental sustainability principles into the development application process would seem beneficial.

⁴⁹ ACT Auditor-General's Office, Performance Audit Report, Development Application and Approval Process, ACT Planning and Land Authority, Chief Minister's Department, May 2005, p. 50, para. 4.5.

URBAN DESIGN

5.17 Urban design involves planning the physical features of settlements to create places for people and to make high-quality connections between places and buildings for safe movement of people. Communities have different expectations and values on what constitutes good urban design.

Urban design priorities for the National Capital

5.18 The *Territory Plan*⁵⁰ sets clear goals to preserve Canberra's 'garden city' and 'bush capital' qualities, and expects urban design to acknowledge Canberra as the national capital, by:

- giving priority to the unique landscape setting that creates its 'garden city' and 'bush capital' qualities;
- assigning special attention to safeguarding visual amenity;
- protecting vegetation and other important features within the urban landscape; and
- ensuring the high quality of environmental design in new developments or redevelopments.

5.19 Policies should acknowledge Canberra as the national capital and the symbolic heart of Australia and will seek to preserve the landscape features that give the national capital its character and setting, respect and reinforce the key elements of Walter Burley Griffin's formally adopted plan for Canberra within the proposed urban settlement pattern, enhance and strengthen approaches and backdrops to the city and its national institutions, conserve open space between urban areas as visual separation buffers consistent with the landscape setting, retain areas that are identified as the rural setting surrounding the city, and retain key vistas created by the landscape network within new settlement areas.

5.20 There is limited guidance for Case Officers involved in advising applicants and assessing development applications against the urban design principles of the *Canberra Spatial Plan*.

5.21 The limited guidance is reflected in the 25 sampled development applications examined by Audit where the majority of assessments did not include urban design considerations. The only exception was one large-scale development proposal, where design advice was received from the Directorate's Design Policy Team.

⁵⁰ *Territory Plan*, Statement of Strategic Directions, Urban Design, p. 6, para. 2.15.

- 5.22 There is need for the Directorate to determine how urban design principles within the Canberra Spatial Plan should be considered in the context of development proposals, in terms of providing guidance to applicants and Case Officers.
- 5.23 Better practice examples observed in other state and local government planning and development systems embed urban development principles across the planning and development process.
- 5.24 Central to this is educating industry as to Government and community expectations, whilst maintaining compliance with relevant standards and codes. Through the provision of information guidance and tools to facilitate integration of urban design principles into development proposals relevant to the particular community objectives/context and the type of development.
- 5.25 An example, is the Victorian Department of Planning and Community Development, the Office of the Victorian Government Architect and Adelaide City Council have established Design Assurance Panels, Urban Design Charters and detailed case studies of good urban design for different types of developments.
- 5.26 In the absence of integrated urban design principles in the development assessment process, developments may be approved that are technically compliant but not necessarily consistent with successful urban design or the expectations of the Canberra community.
- 5.27 The Directorate has not fully integrated environmentally sustainable development and urban design principles into development application processes. This needs to be addressed through the provision of relevant information and guidance for developers, referral entities and Directorate Case Officers involved in supporting the development application process.
- 5.28 A review of policy and the development of a better practice guide may assist in the application of the principles of environmentally sustainable development and achieves high quality urban design for high density residential and commercial developments. Such a guide, or its equivalent, could be developed by the Directorate in partnership with the Territory Architect and in consultation with referral entities.

Recommendation 6 – (Chapter 5 – Environmentally Sustainable Development and Urban Design)

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.

APPENDIX A: AUDIT CRITERIA, APPROACH AND METHODOLOGY

AUDIT CRITERIA

Key issues to be determined included:

- [List audit criteria, organised into sub-sections (which may follow the structure of the report) expressed in a positive manner – see following example]

Accountability issues

- Delegation of decision-making authority is consistent with departmental policy.
- The performance management framework is structured and documented, and provides the means to effectively manage the planning, implementation and quality of regulatory administration.
- Mechanisms are in place that minimise the risk of corruption and misconduct, including actual or potential conflict of interest, regulatory capture, misuse of official information and abuse of power.

AUDIT APPROACH AND METHODOLOGY

The performance audit was conducted under the authority of the *Auditor-General Act 1996*, and in accordance with the principles, procedures, and guidance contained in Australian Auditing Standards relevant to performance auditing. These standards prescribe the minimum standards of professional audit work expected of performance auditors. Of particular relevance is the professional standard on assurance engagements - *ASAE 3500 Performance Engagements*.

The audit approach and methodology consisted of:

- [List important stages of the audit – see following example]
- reviewing relevant literature and work undertaken on this subject by other jurisdictions with the intention of finding better practices;
- identifying those documents that set out the policies and procedures to be followed when assessing the Department's operations and processes. This involved identifying the governance and accountability framework and related policy and procedures, researching documents and discussion with the relevant departmental staff;
- identifying procedures and controls used to give effect to the policies and guidelines and to ensure compliance;
- determining whether all the relevant administrative requirements, policies and guidelines had been adequately followed; and
- briefings, interviews, and correspondence with relevant agency staff.

AUDIT REPORTS

Reports Published in 2011-12

Report No. 4 / 2012	Development Application and Approval System for High Density Residential and Commercial Development
Report No. 3 / 2012	Early Childhood Schooling
Report No. 2 / 2012	Whole-of-Government Information and ICT Security Management and Services
Report No. 1 / 2012	Monitoring and Minimising Harm Caused by Problem Gambling in the ACT
Report No. 06 / 2011	Management of Food Safety in the Australian Capital Territory
Report No. 05 / 2011	2010-11 Financial Audits
Report No. 04 / 2011	Annual Report 2010-11

Reports Published in 2010-11

Report No. 03 / 2011	The North Weston Pond Project
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