

# ACT Planning System Governance Review

Final Report



**PEG**

CONSULTING

## Disclaimer

This report is prepared for the sole and exclusive use of the Chief Minister, Treasury and Economic Development Directorate, ACT Government.

The information in this report is based on meetings, interviews, documentation and data received in good faith from the stakeholders and personnel who assisted with this engagement.

Other than the responsibility that PEG Consulting has to the Chief Minister, Treasury and Economic Development Directorate. PEG Consulting does not take responsibility arising in any way from reliance placed upon this report by a third party. Any reliance placed is the sole responsibility of that third party.

PEG Consulting believe that the statements made in this report are accurate, but no warranty of accuracy or reliability is given.

# ACT Planning System Governance Review: Final Report

<b>Executive Summary</b> .....	<b>3</b>
Findings .....	5
Recommendations .....	6
Acronyms.....	8
<b>Part 1: Context</b> .....	<b>10</b>
Review Context .....	10
Terms of Reference .....	12
Methodology .....	13
<b>Part 2: Governance Structures and Arrangements</b> .....	<b>14</b>
The ACT Public Sector Context .....	14
The Planning System’s key governance roles .....	15
Figure 1: Planning system governance map.....	17
Figure 2: Who plays what role in a Development Application? .....	18
Decision-makers in the planning system.....	19
The Territory Planning Authority .....	19
Chief Planner .....	19
The Ministers .....	20
Referral entities .....	21
Development Applications and Referrals, 2023.....	22
The Conservator of Flora and Fauna (Conservator) .....	22
The Heritage Council.....	23
The Environment Protection Authority (EPA) .....	24
Design Review Panel and Government Architect .....	25
The City Renewal Authority (CRA) and the Suburban Land Agency (SLA).....	26
The Environment, Planning and Sustainable Development Directorate (EPSDD).....	26
EPSDD Staffing by function 2022-23 .....	27

<b>Part 3: Consideration of Committee Recommendations .....</b>	<b>28</b>
Committee Recommendation 11: Dual Role: Director-General and Chief Planner .....	28
Compatibility.....	29
Competing obligations to Ministers.....	31
Appointments and resourcing .....	33
Confluence of oversight .....	33
Role Clarity and Delineation .....	34
“Better” governance .....	36
Committee Recommendation 12: Frank and Fearless Advice.....	37
Comparable tenure protections.....	38
Committee Recommendation 16: Role of independent experts .....	39
Committee Recommendation 47: Landscape Architect.....	41
<b>Part 4: Other Governance Matters.....</b>	<b>42</b>
Governance to achieve the Objects of the Act.....	42
Greater collaboration .....	44
Ecologically Sustainable Objects .....	46
Trust and Transparency.....	46
Role clarity and independence: TPA v EPSDD .....	51
<b>Appendix 1: Terms of Reference .....</b>	<b>53</b>
<b>Appendix 2: Other Sources .....</b>	<b>56</b>
<b>Appendix 3: Planning governance in other jurisdictions.....</b>	<b>57</b>
<b>Appendix 4: Stakeholders invited to contribute .....</b>	<b>58</b>
<b>Appendix 5: Related activity .....</b>	<b>59</b>
<b>Appendix 6: EPSDD organisational chart .....</b>	<b>60</b>
<b>Appendix 7: Work Instruction: AAP.....</b>	<b>61</b>
<b>Appendix 8: Integrity and Complaints: EPSDD .....</b>	<b>63</b>

# Executive Summary

The ACT's planning system has changed from a prescriptive, rules-based system into a system based on outcomes. These outcomes are defined at a high level in the new *Planning Act 2023* (the Planning Act), which came into force on 27 November 2023.<sup>1</sup>

The new legislation was the subject of an Inquiry by the Standing Committee on Planning, Transport and City Services (the Inquiry).<sup>2</sup> Through this process and the consultation leading up to the Bill, concerns were raised that the new Planning Act substantially preserves the governance arrangements that applied under the former *Planning and Development Act 2007* (the Planning and Development Act).

The Inquiry called for an independent review of planning governance. The Government responded to this call with a commitment to:

undertake a review to make sure that the governance arrangements are best practice and fit for purpose for the new planning system.<sup>3</sup>

The Assembly then set a timeframe and scope for the review, with a Motion passed on 31 May 2023 calling on the Government to:

undertake a governance review on the new ACT Planning System conducted by an independent expert who does not report to [the Environment, Planning and Sustainable Development Directorate] EPSDD, to be conducted within 12 months of passage of the Planning Bill and to be tabled in the Legislative Assembly, with the terms of reference of the review to include issues raised in the Committee Report including recommendations 11, 12, 16 and 47.<sup>4</sup>

The ACT Planning System Governance Review (the Review) has been informed by the background that initiated the Review; the context of the new legislation delivering significant reforms, including a shift from a prescriptive rules-based system into a system based on outcomes; the fact that key governance, administrative and machinery of government arrangements have largely been the same for ten years;<sup>5</sup> existing documentation; meetings with internal stakeholders; and submissions from those who contribute to the current governance arrangements.

This Report of the Review is structured in the following way:

---

<sup>1</sup> This Review commenced prior to the commencement of the new Act.

<sup>2</sup> Standing Committee on Planning, Transport and City Services - Report No. 12 - Inquiry into the Planning Bill 2022 – [https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0005/2156792/PTCS-Report-12-Inquiry-into-Planning-Bill-2022-Final-Report-SIGNED2.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0005/2156792/PTCS-Report-12-Inquiry-into-Planning-Bill-2022-Final-Report-SIGNED2.pdf)

<sup>3</sup> ACT Government, 2022, Government response to Standing Committee on Planning, Transport and City Services - Report No. 12 - Inquiry into the Planning Bill 2022 [https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0009/2211489/PTCS-12-Inquiry-into-Planning-Bill-2022-Government-Response-tabled-24-April-2023.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0009/2211489/PTCS-12-Inquiry-into-Planning-Bill-2022-Government-Response-tabled-24-April-2023.pdf)

<sup>4</sup> <https://www.hansard.act.gov.au/hansard/10th-assembly/2023/PDF/20230531.pdf>, p1412

<sup>5</sup> Ten years of similar governance arrangements *could* indicate that these arrangements are sound and have worked well. See for example then Minister for Planning at the Planning Bill Inquiry hearings, 2022, p163: “governance arrangements provide very good scrutiny for us in the territory, and I do not see that there is any need to change that” - <https://www.hansard.act.gov.au/Hansard/10th-assembly/Committee-transcripts/ptcs27a.pdf>. However, the Planning Bill Inquiry Report and Government response noted Assembly and community views that the extent of change to the planning system required a review of the governance arrangements – leading to this Report.

1. **PART 1: Review Context.** This Part outlines key considerations and matters of context that informed the Review.
2. **PART 2: Governance Structures and Arrangements.** This Part provides the Review's summary of governance arrangements relevant to the Terms of Reference, including key roles and responsibilities and their relationship to each other.
3. **PART 3: Committee Recommendations.** This Part provides a specific response to the four Committee Report recommendations referenced in the Assembly motion.
4. **PART 4: Other Governance Matters.** This Part explores opportunities to further strengthen governance within the ACT planning system.

The Review has found that there are many sound governance practices in place which support the new planning system. However, there are further steps that could be taken to strengthen aspects of current governance arrangements. The Report's focus is on those elements of governance where opportunities for improvement have been identified.

The Report contains both Findings, and a set of Recommendations that may address the Findings, for consideration by the Government.

# Findings

## Finding 1

The Chief Planner role can be occupied by a senior public servant. It is common and acceptable practice, particularly in smaller jurisdictions, that statutory office positions requiring the exercise of independent judgement are held concurrently with public service roles.

## Finding 2

Governance of the planning system is complex. Despite this complexity, there is no published governance framework that maps the roles and responsibilities of key decision makers and advisers, or the governance arrangements for implementing the new Planning Act. The commencement of the new Planning Act provides an educational opportunity for stakeholders to understand how decisions are taken, and by whom.

## Finding 3

Transparency of decision-making would be improved if the Territory Planning Authority (TPA) published aggregate data about entity advice.

## Finding 4

The dual role arrangement where the powers of the Director-General and Chief Planner reside with the same person results in a significant concentration of responsibility in one individual. These responsibilities are not always compatible.

## Finding 5

The legal framework for roles involved in the planning system (other than the Chief Planner) could be enhanced to better protect the independence of referral entities and their ability to provide frank and fearless advice – for example, the Conservator of Flora and Fauna (Conservator), the ACT Government Architect and the Environment Protection Authority (EPA).

## Finding 6

There is existing landscape architect expertise available in the planning system and the appointment of a (titled) Landscape Architect is not a pressing governance matter.

## Finding 7

It is not clear where accountability sits for the oversight and monitoring of ecologically sustainable development and how the ambition of the Planning Act will be achieved in this area.

# Recommendations

## Recommendation 1

The ACT Government should release specific guidance on obligations, expectations, and best practice management of holding joint statutory and public sector roles.

## Recommendation 2

Separating the role of Chief Planner from the responsibilities of the Director-General, EPSDD would deliver a better governance arrangement.

## Recommendation 3

The person holding the role of Chief Planner should not have the power to influence the appointment of the Conservator and Government Architect positions. Governance arrangements would be strengthened if appointments to the Conservator, EPA and Government Architect, all roles which are charged with providing frank and fearless advice to the Territory Planning Authority, sat with a Minister or an officer who did not also hold the role of Chief Planner.

## Recommendation 4

Consideration should be given to using the Assessment Advisory Panel (AAP), to provide advice on the small number of matters that may deviate from entity advice. Relevant independent expert(s) should be invited to participate in the provision of this advice. Transparency would be improved if the advice provided by the AAP on matters which deal with deviating from entity advice was published.

## Recommendation 5

A strategic advisory body, that includes referral entities and those outside of the TPA that have relevant expertise, should be established to support achieving the Objects of the Planning Act.

## Recommendation 6

The TPA governance framework should seek to encourage more opportunities for earlier collaboration across referral entities and other relevant bodies that interact with the Development Application (DA) processes and in policy settings including developing or reviewing guidelines.

## Recommendation 7

The TPA should prioritise transparency in its decision-making, including proactive release of data, accessible graphics and other information. This should include:

- a) a governance framework that describes the different roles within the planning system and their relationship to each other; and the purpose and membership of governance committees
- b) a dedicated section on the website relating to the TPA which clearly explains who is responsible for what, by (de-identified) positions



- c) open disclosure of decision-making processes and which roles/expertise have inputs that support the new outcomes-based decision-making model. This should provide a clear and transparent understanding of accountability for activity and outcomes
- d) open disclosure of decision-making criteria that will be applied if a decision is to deviate from entity advice
- e) publication of the Design Review Panel's advice on projects and reasons for application approval if the proponent has not followed this advice
- f) aggregate data relating to entity advice; how often entity advice is deviated from; and which entity's advice was not followed should be reported on the Development Application statistics page
- g) separate annual reporting that provides a permanent record of data and other matters, including the TPA appearing in Column 2 (like the Conservator and Heritage Council) in any updated Annual Report Direction.

### Recommendation 8

Consideration should be given to the Director-General of EPSDD being a prescribed referral entity for an Environmental Impact Statement (EIS) in the Planning Regulations, given their responsibilities for the environment under current administrative arrangements.

# Acronyms

Term	Definition
<b>ACT public sector</b>	The Australian Capital Territory public sector as defined in the PSM: the (ACT) public service and entities in which public sector members are employed that are owned or operated by the Territory or a Territory instrumentality
<b>ACT public service</b>	The people employed in the ACT public sector, comprising the senior executive service, officers and employees (PSM, s.12)
<b>Administrative Arrangements</b>	<i>Administrative Arrangements 2023 (No. 1) (ACT)</i>
<b>CRA</b>	City Renewal Authority
<b>Conservator</b>	Conservator of Flora and Fauna under the Nature Conservation Act
<b>DA</b>	Development Application – an application to the TPA for approval to undertake the proposed development (Planning Act, s. 166)
<b>DG</b>	Director-General
<b>DRP</b>	Design Review Panel – Planning Act, Part 6.2.
<b>EIS</b>	Environmental Impact Statement (Planning Act, Part 6.3)
<b>EPA</b>	Environment Protection Authority established by the Environment Protection Act, Division 2.1
<b>Environment Protection Act</b>	<i>Environment Protection Act 1997 (ACT)</i>
<b>EPSDD</b>	Environment, Planning and Sustainable Development Directorate
<b>Heritage Act</b>	<i>Heritage Act 2004 (ACT)</i>
<b>Heritage Council</b>	The ACT Heritage Council established by the Heritage Act, Part 3
<b>Planning Act</b>	<i>Planning Act 2023 (ACT)</i>
<b>Planning and Development Act</b>	<i>Planning and Development Act 2007 (repealed)</i>
<b>Planning Regulation</b>	<i>Planning (General) Regulation 2023</i>
<b>Public Sector Management Act</b>	<i>Public Sector Management Act 1994 (ACT)</i>
<b>Review</b>	ACT Planning System Governance Review

Term	Definition
<b>Nature Conservation Act</b>	<i>Nature Conservation Act 2014 (ACT)</i>
<b>NCA</b>	National Capital Authority
<b>SLA</b>	Suburban Land Agency
<b>TPA</b>	Territory Planning Authority (Planning Act, Chapter 3)
<b>TPP</b>	Territory Priority Project (Planning Act, s.216)

# Part 1: Context

## Review Context

In the ACT public sector, governance is defined as:

encompassing the systems and structures by which directorates and agencies are directed, controlled, and operated and the mechanisms by which it, and the people within it, are held to account.<sup>6</sup>

The ACT's planning system has changed from a prescriptive, rules-based system into a system based on outcomes. These outcomes are defined at a high level in the new Planning Act, which came into force on 27 November 2023.<sup>7</sup>

The new legislation was the subject of an Inquiry by the Standing Committee on Planning, Transport and City Services (the Committee).<sup>8</sup> Through this process concerns were raised that the new Planning Act substantially preserves the governance arrangements that applied under the former Planning and Development Act – as articulated by the inquiry chair:

CHAIR: I might begin with the first question. I actually want to have a chat about governance. We heard a lot from our witnesses and our submitters on governance. We had 65 submissions. Of those, 21 raised accountability, 16 were worried about centralisation of power, 10 wanted more oversight from the Assembly, 10 wanted more rights to review and five are worried about overriding entity advice. So that is actually quite a lot of written concerns. During the hearings we have also had a lot of conversations about governance with our witnesses.<sup>9</sup>

These issues were reflected in the recommendations of the Committee. In response, the Government gave a commitment to:

undertake a review to make sure that the governance arrangements are best practice and fit for purpose for the new planning system.<sup>10</sup>

The Assembly then set a timeframe and scope for the review, with a Motion passed on 31 May 2023 calling on the Government to:

undertake a governance review on the new ACT Planning System conducted by an independent expert who does not report to EPSDD, to be conducted within 12 months of passage of the Planning Bill and to be tabled in the Legislative Assembly, with the terms of

---

<sup>6</sup> 2022, ACT Government, Good Governance in the ACT Public Sector – Checklist - [https://www.cmtedd.act.gov.au/\\_\\_data/assets/pdf\\_file/0018/2004930/Checklist-Good-Governance-in-ACTPS.pdf](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0018/2004930/Checklist-Good-Governance-in-ACTPS.pdf)

<sup>7</sup> This Review commenced prior to the commencement of the new Act.

<sup>8</sup> PTCS, 2022, Planning Bill Inquiry Report No. 12

<sup>9</sup> Planning Bill Inquiry hearings, 2022, Day 2, p161. The YourSay government consultation in 2022 completed before the Committee Inquiry noted similar governance matters as “out of scope” for the planning review - [https://yoursayconversations.act.gov.au/download\\_file/view/7853/2448](https://yoursayconversations.act.gov.au/download_file/view/7853/2448).

<sup>10</sup> ACT Government, 2022, Government response to Inquiry into the Planning Bill 2022.

reference of the review to include issues raised in the Committee Report including recommendations 11, 12, 16 and 47.<sup>11</sup>

**These recommendations were:**

Recommendation 11 – The Committee recommends that the ACT Government review the current arrangement whereby the role of the Chief Planner and the role of the Director-General of EPSDD are held by the same person, to see whether better governance and potentially better outcomes could be achieved by separating those roles.

Recommendation 12 – The Committee recommends that the ACT Government review governance and administrative arrangements to ensure that entities and individuals that are intended to provide frank, fearless and independent planning advice to the Chief Planner, can do so.

Recommendation 16 – The Committee recommends that the ACT Government explore opportunities to employ an independent professional body of experts who can feed into the decision-making process when overriding entity advice under clause 187 of the Bill.

Recommendation 47 – The Committee recommends that the ACT Government appoint a Government Landscape Architect to provide advice to the ACT Government and explore the introduction of a landscape policy for the Territory.<sup>12</sup>

The governance and administrative arrangements that the Review has considered include those of some referral entities under the planning system and relevant roles undertaken by office holders who discharge functions in the planning system. However, the scope of this consideration for each role is not exhaustive. This is due to the primary focus of this Review being guided by the matters referenced in the Motion and the Review being mindful of the wider context and related activity that has or will consider some of these matters (see **Appendix 5**).

---

<sup>11</sup> <https://www.hansard.act.gov.au/hansard/10th-assembly/2023/PDF/20230531.pdf>, p1412

<sup>12</sup> PTSC, 2022, Planning Bill Inquiry Report No. 12.

# Terms of Reference

The Terms of Reference for the Review were developed following consultation with the Chief Planner, the Conservator of Flora and Fauna, the Government Architect, and the Chief Planner of the National Capital Authority<sup>13</sup> – the latter two in their roles as co-chairs of the Design Review Panel. The full Terms of Reference are at **Appendix 1** and were published by the ACT Government on the Chief Minister, Treasury and Economic Development website in November 2023.

The Scope of the Review is specified as:

1. The Review will consider the effectiveness of the governance framework of the ACT's new planning system and whether it supports the delivery of an efficient and transparent planning system within the ACT context.
2. The Review will consider the principles and practices of good public sector governance in relation to planning and specifically the governance arrangements of persons, positions and decision-making functions that have a direct, advisory, regulatory, or statutory role, specifically:
  - a. The ACT's Chief Planner;
  - b. The National Capital Design Review Panel;
  - c. The ACT Government Architect; and
  - d. The Conservator of Flora and Fauna.
3. The Review may also consider the role of any additional offices which have a governance or integrity role relevant to the planning system. This will include an assessment of the ability of planning system officeholders to perform the intended functions of their roles in accordance with statutory requirements, with respect to:
  - a. the degree of independence and separation afforded to each role;
  - b. the ability to provide and receive advice; and
  - c. accountability and responsibility in the decision-making process.
4. The Review will consider the Standing Committee on Planning, Transport and City Services Report 12 - Inquiry into Planning Bill 2022 recommendations that relate to the governance and decision-making framework, including recommendations 11, 12, 16 and 47.

In considering the above terms, the review shall give due consideration to the fact the ACT is a small jurisdiction which may necessitate particular governance arrangements for reasons of both capacity and efficiency.

---

<sup>13</sup> The Chief Planner of the NCA is the Senior Executive who oversees planning functions and decisions for the NCA. This is not a separate statutory role like the ACT Chief Planner.

# Methodology

The Review has explored the following elements of good governance: transparency, accountability, participation, and safeguards. This Report focuses on the first two issues, with the Review being satisfied with the participation and safeguards elements of the system.

The Review considered the governance of the ACT planning system through document analysis, qualitative interviews, written submissions, and assessment of existing documentation and quantitative data. The Review considered:

- ACT government guidelines and policies relevant to governance
- The significant volume of planning and public sector legislation and subordinate law that creates the planning system and the checks and balances on the ACT public service
- relevant planning system guidelines and policies
- decision-making criteria and other documents provided by EPSDD
- job descriptions and employment arrangements
- other reviews and reports including *Governing the City State: Review of ACT Public Sector Structures and Capacity* (the Hawke Review), the *Review of the corporate governance of statutory authorities and office holders* (the Uhrig Review); OECD guidelines on the governance of regulators, and others (see **Appendix 2**)
- arrangements in other jurisdictions (**Appendix 3**)
- relevant public submissions, hearing transcripts and reports from Assembly and ACT Government consultation in relation to the recent planning change, and
- submissions, information, and insights from stakeholders who provided input to the Review, including:
  - inviting 30 stakeholders to provide feedback (list at **Appendix 4**)
  - meeting with 17 stakeholders
  - receiving written submissions, examples and/or other documentation.

The Review considered relevant public submissions and inputs to the Planning Governance Review and Reform YourSay consultations on the Planning Bill and Territory Plan; the Assembly Inquiry into the Planning Bill 2022; and the 2023 Inquiry into the Territory Plan. Where relevant, quotes and examples from this previous public input have been referenced in this document.

# Part 2: Governance Structures and Arrangements

## The ACT Public Sector Context

The ACT public sector is unique in that it serves a jurisdiction, a Territory, with only a single layer of government. Since Self-Government in 1989, the ACT public service has delivered both traditional state and local government functions, including state functions like hospitals, schools, emergency services, law and order, public transport, water, gas and electricity, and local government functions such as garbage collection, parking or managing parks. Land use planning is often conducted at both layers of government in other Australian jurisdictions. Even more uniquely, as the home of the nation's capital, a Commonwealth body (the NCA) has responsibility for planning decisions for land in "designated areas" identified in the National Capital Plan – i.e. for planning in the parts of Canberra that are of national significance.

The ACT public sector is a "one public service" model, with a central "directorate" headed by the "Head of Service", to whom the heads of each agency (directorate) reports. This model – established after the 2011 Hawke Review – allows the sector to deliver multiple functions for multiple Ministers. In a small public service like the ACT, it is common to find individuals performing multiple functions that in a larger bureaucracy would be delivered by whole teams.<sup>14</sup>

It is not uncommon for statutory office positions to be held by those with executive roles in the public service – particularly small jurisdictions where economies of scale and resource availability are material factors in machinery of government arrangements. The Hawke Review commented "*in the event it is thought necessary to create statutory decision-making powers or functions, the default position should be that the powers are vested in a public servant*".<sup>15</sup> However, there is little judicial or academic exploration that discusses the implications of this, with most focus being on the issue of conflict of interest rather than duty.<sup>16</sup>

Considering this context, the Review has made the following finding and recommendation:

---

<sup>14</sup> For example, many of the regulatory functions of the ACT Government are centralised in "Access Canberra", an agency within the larger Chief Minister, Treasury and Economic Development Directorate. The Senior Executive who is the Construction Occupations Registrar is also the Registrar of Architects, and leads a Branch that delivers functions across these roles under delegation. See <https://www.accesscanberra.act.gov.au/about-us/access-canberra-policies-accountabilities-and-reporting>

<sup>15</sup> Many of the observations of the Hawke Review remain relevant regarding dual role holding, for example: *In a city state government, there are inevitably conflicts of interest that need to be managed, but there is no reason why this cannot be done without compromising the independence of those office holders* (Hawke Review, pp103-104).

<sup>16</sup> The doctrine of incompatible public offices has been explored in case law insofar as it applies to judicial office holders.



## Finding 1

The Chief Planner role can be occupied by a senior public servant. It is common and acceptable practice, particularly in smaller jurisdictions, that statutory office positions requiring the exercise of independent judgement are held concurrently with public service roles.

## Recommendation 1

The ACT Government should release specific guidance on obligations, expectations, and best practice management of holding joint statutory and public sector roles.

# The Planning System's key governance roles

The ACT planning system is complex, with many entities providing advice or direction, contributing views, making decisions, and/or reviewing decisions.

In this section we discuss the history and roles of various entities and individuals in an attempt to make the complexity of the system clearer.<sup>17</sup> Understanding the current governance arrangements is a necessary step before the Review can explore any governance matters that could be improved (see Part 3). None of this is intended to suggest the existence of any improper behaviour across the system. Rather it is to make the point that even for a small jurisdiction like the ACT, the implementation of the new Planning Act creates an opportunity to reduce complexity, communicate about the system more clearly, and identify where there may be areas for improvement.

The Review has not been provided with, and is not aware of, a published governance framework for the new or previous planning system.

Based on the review of documents and information provided by EPSDD, the Review has produced Figures 1 and 2 below which attempt to illustrate the complexity of the system and the roles and relationships of entities who provide advice, decide, and review a development application.

Figure 1 illustrates the complex way that the planning system fits together for a Development Application and some aspects of other planning-related decisions. In the centre of this illustration is the main decision-making entity, the TPA. The administrative structures of the ACT public sector (as at March 2024), as well as the Executive (known as Cabinet), Ministers, the ACT Legislative Assembly and the oversight bodies of the ACT public sector are included.

This map is not intended to show every single part of the ACT planning system – but to illustrate the complex governance landscape of the planning system.

---

<sup>17</sup> For example, Gungahlin Community Council noted in its submission to the 2022 Planning Bill Inquiry: “A very high level of assumed knowledge was required to be able to consider the material provided and it was clear that any stakeholder that might wish to respond to the consultation would need a strong background and/or expertise in ACT legislation and planning to do so. The Planning Bill is almost impossible for the average citizen to comprehend...”.

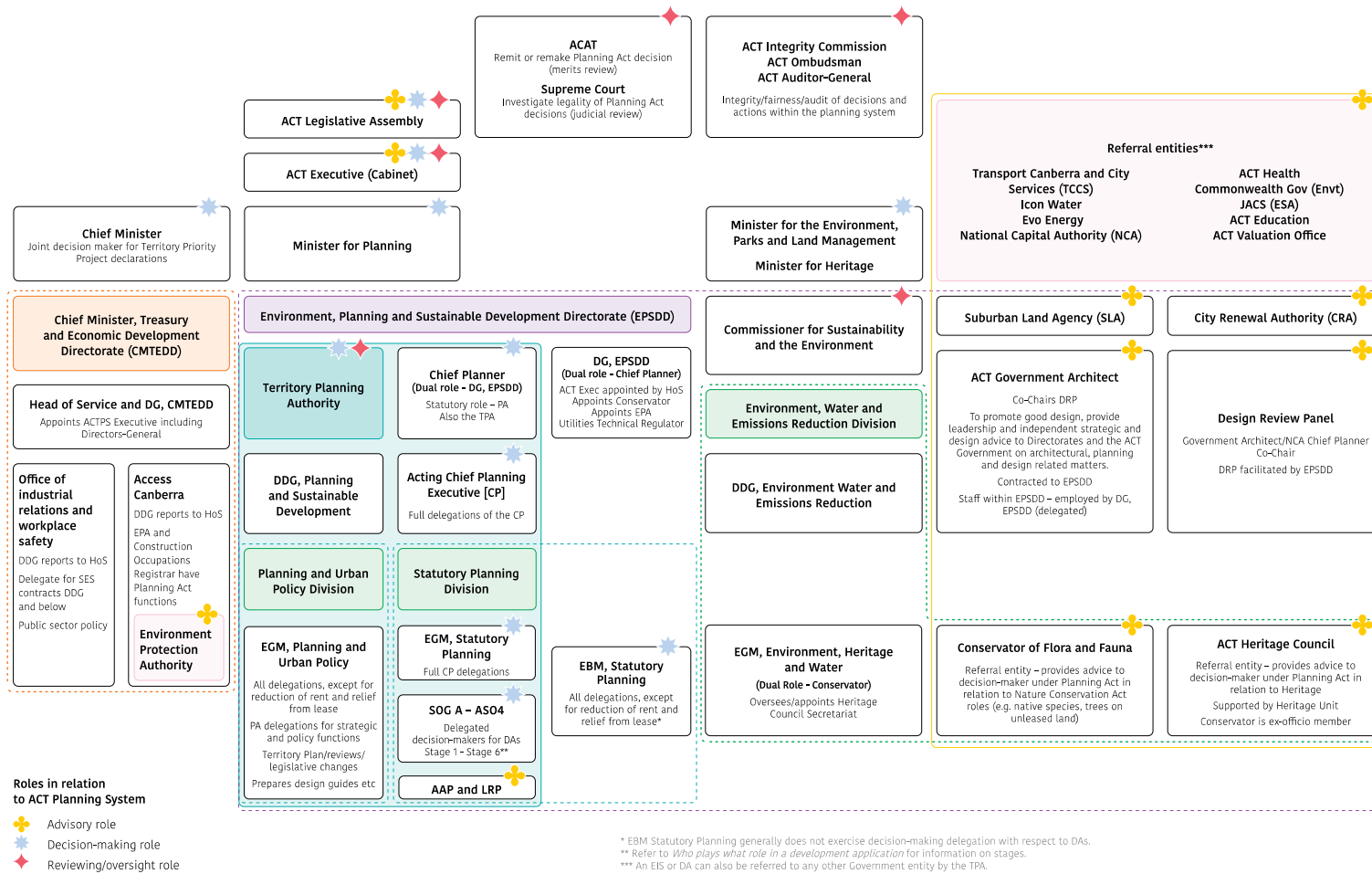
[https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0005/2111999/Submission-36-Gungahlin-Community-Council.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0005/2111999/Submission-36-Gungahlin-Community-Council.pdf)

Figure 2 is a process-based diagram of the system, based around the roles and relationships of entities who play a role in advising on, deciding and/or reviewing a development application.

Like the system map, this diagram shows the various entities and the roles they play in relation to the planning system. Some of these entities have roles outside of the planning system (for example the EPA and Heritage Council have decision-making powers under their own Acts).

Figure 1: Planning system governance map

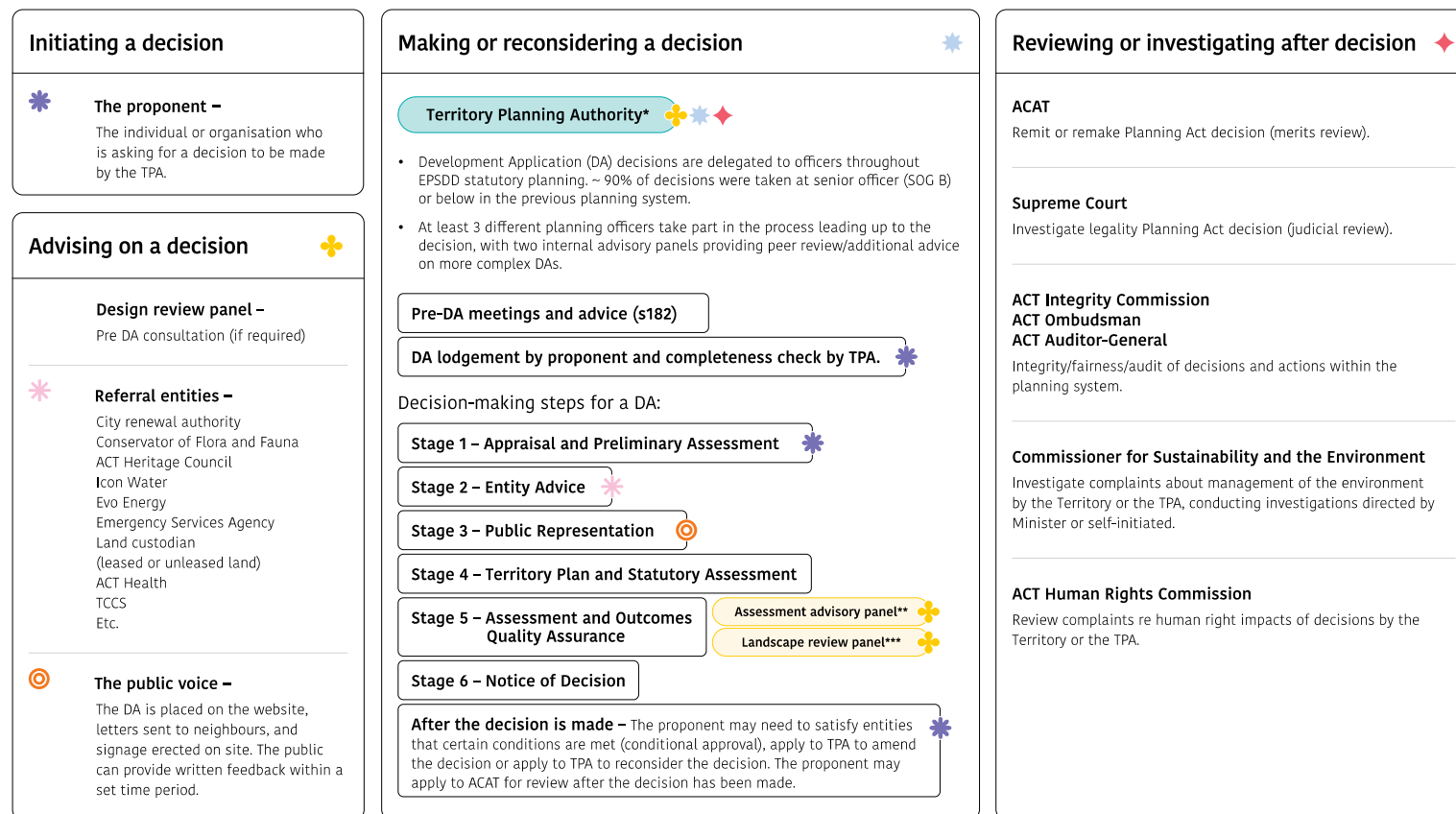
ACT Planning System: Decision-makers, advisory and review bodies



Source: produced by the Review based on legislation and evidence/ information provided by EPSDD and others.

**Figure 2: Who plays what role in a Development Application?**

**ACT Planning System: Who plays what role in a Development Application?**



**Key**

- Advisory role (DAs)
- Decision-making role (DAs)
- Reviewing/oversight role (DAs)
- Steps in the DA process where proponent plays a role
- Stage in the DA process where referral entity advice is considered
- Stage in the DA process where public advice is considered

\* The TPA can reconsider its own decisions and review its own decisions under certain circumstances.  
 \*\* The AAP is an internal non-statutory advisory (not decision-making) body used by the TPA to support DA assessment. It convenes weekly, or as required, to discuss certain DAs based on a series of triggers (e.g. high volume of public comments, large development, entities have major concern etc). Referral agencies can attend by invitation.  
 \*\*\* The LRP is an internal non-statutory advisory (not decision-making) body used by the TPA to support DA assessment. It convenes weekly, or as required, to discuss DAs where there is a proposal to depart from entity advice in relation to a protected tree. The Conservator and Tree Protection Unit (TCCS) are part of the core membership.

*Source: produced by the Review based on legislation and evidence/ information provided by EPSDD and others*

# Decision-makers in the planning system

The key governance roles that were considered by the Review are outlined below.<sup>18</sup>

## The Territory Planning Authority

The TPA is a corporation. The Chief Planner (an individual) is also the TPA. Section 18 of the Planning Act outlines the TPA's substantial list of functions and powers that support the operation of the planning system. This includes preparing, administering, and reviewing the Territory Plan and other documents; advising on planning and land policy; deciding applications; granting leases; and providing education and opportunities for participation in planning decision-making processes.

## Chief Planner

The Director-General of EPSDD also occupies the role of the Chief Planner.<sup>19</sup>

The Chief Planner is appointed by the Executive (Cabinet). The Planning Act sets out criteria for appointment to this role including qualifications and experience.<sup>20</sup> It is possible that a future Director-General of EPSDD would not meet the criteria for appointment as Chief Planner.<sup>21</sup> The Chief Planner can only be removed by resolution of the Assembly by recommendation of the Executive, and only in very specific circumstances – for example, due to mental or physical incapacity, or if bankrupt or personally insolvent.<sup>22</sup>

All of the functions that the Chief Planner performs as the TPA that are able to be delegated have been delegated to the Deputy Director-General/s of EPSDD and the Executive Group Manager of the Statutory Planning Division.<sup>23</sup> The use of delegations has been thoughtful and also allows the Deputy Director-General and senior executive roles to be reserved to conduct a reconsideration of a decision made by delegates, if required.

There are a range of other delegations in place to the public service staff who work in the Planning and Urban Policy Division and Statutory Planning Division of EPSDD.<sup>24</sup> Delegations are also in place for officers in Access Canberra, who undertake compliance functions.

---

<sup>18</sup> This not an exhaustive summary of all roles and powers under the Planning Act. We note for example that the Assembly and Executive each play important roles in both oversight and scrutiny (the Assembly role) and direction of the planning system (the Executive role, for example setting the Planning Strategy under s.36 and setting the District Strategies). The Assembly and Executive also have roles in relation to appointing – or removing – a Chief Planner (Part 3.4).

<sup>19</sup> The Chief Planner is the Planning Authority; the Chief Planner is a public servant; and the Chief Planner is also the Director-General of a public sector entity with oversight of both planning and environment. The Director-General, EPSDD is engaged by the Head of Service under the PSM Act s. 31(2), and reports to both the relevant Minister/s and to the Head of Service.

<sup>20</sup> Planning Act, s. 26.

<sup>21</sup> Appointment term can be up to 5 years per s 26.

<sup>22</sup> The chief planning executive under the repealed Act was appointed for the period 14 April 2022 to 13 April 2027. This appointment transfers over to the role of Chief Planner by virtue of the transitional provisions in the Planning Act.

<sup>23</sup> Planning (Territory Planning Authority) Delegation 2023 (No 1) Notifiable Instrument NI2023-707. The same functions have been delegated to the Executive Branch Managers of two Divisions (PUP and Statutory Planning) and the Executive Group Manager of PUP, except reduction of rent and relief from provisions of lease. Powers exercised under Chapter 10 of the Planning Act in relation to offsets are not able to be delegated - s. 255.

<sup>24</sup> There are also delegations to staff in Access Canberra, and limited delegations to others in EPSDD.

The Chief Planner is always the TPA – but there are also functions in the Planning Act for the Chief Planner only.<sup>25</sup> Many of the Chief Planner’s functions have been delegated to officers within EPSDD or Access Canberra.

The Chief Planner has advised he has not made a development application decision since he has held the role of Director-General. Data on the volume of DA decisions made by various delegates on DAs was not readily available to the Review, but some estimates were provided by EPSDD: delegates such as the Deputy Director-General, Planning and Sustainable Development will make 1-2 development application decisions a year; the Executive Group Manager Statutory Planning in the order of 30-40 decisions; and delegates within the Statutory Planning Division deciding the majority of the just under 1000 DAs annually (noting these figures relate to DAs under the previous planning system).<sup>26</sup>

The Planning Act requires the TPA to consult, engage, and give consideration to multiple factors. Planning decisions require the Chief Planner/TPA to consider all advice with the purpose of giving primacy to achieving the desired outcomes of the Territory Plan – and to consider this advice in light of relevant planning documents specified in the Planning Act, and any public and entity comments, to make a decision in line with the objects of the Act.<sup>27</sup>

In certain situations, a DA may be approved contrary to entity advice if the decision-maker is satisfied that this will significantly improve the planning outcome to be achieved.<sup>28</sup>

## The Ministers

By design, only certain development approval related decisions under the Planning Act will be taken by the Minister. This includes declaration of Territory priority projects (by both the Minister and the Chief Minister) and the making of decisions in relation to priority projects (the Minister).<sup>29</sup>

The Minister has other powers in relation to policies and plans such as Draft Major Plan amendments, EIS, and design guidance for development proposals.<sup>30</sup> The Minister can also decide for an EIS to establish a panel or give a no action authority notice; decide the application and approval for the removal of the

---

<sup>25</sup> The Chief Planner (not as the TPA) can make technical specifications to support design guides and the territory plan (s. 51); extend TPA time to scope an EIS (s. 111); approve certain categories of DAs contrary to entity advice (s. 190); extend time for the TPA to make a controlled activity order (s. 429); and make a direction to sell, destroy or otherwise dispose of a “thing seized”, if it cannot otherwise be returned to its owner (s. 496). The Chief Planner (in addition to the TPA) cannot be appointed to an inquiry Panel for an EIS (s. 133) and is an “information holder” and could commit an offense if they recklessly disclose protected information about someone else, unless required to be law, court, or with consent (s. 518).

<sup>26</sup> Advice from EPSDD, based on development applications considered before the commencement of the new Planning Act. EPSDD also shared an internal work instruction which shows how they allocate development assessment (DA) consideration to delegates at various levels, taking account the volume of community comments; whether the DA relates to a significant development; and the type of decision (e.g. only senior officers can reject or refuse a DA; and only more senior officers can decide a DA where it requires referral to the AAP (see **Appendix 7**) or includes design review panel advice).

<sup>27</sup> The TPA must consider the matters under Planning Act s 186 when making a decision on a development application. The Territory Plan also contains specific “assessment requirements” in its respective policies that are mandatory considerations for a TPA decision-maker.

<sup>28</sup> s 190(1)(d)

<sup>29</sup> s 218 and 291: The Chief Minister and Minister may jointly declare that a development proposal is a territory priority project and approval is granted after public notification, and after the Assembly grants approval.

<sup>30</sup> s 50

concessional status of a lease or for a territory priority project; decide an application for a Territory Priority Project.<sup>31</sup>

The Environment Minister also has specific roles under the Planning Act to make, revise and approve an offsets policy, and can require an EIS in some circumstances.<sup>32</sup>

## Finding 2

Governance of the planning system is complex. Despite this complexity, there is no published governance framework that maps the roles and responsibilities of key decision-makers and advisers, or the governance arrangements for implementing the new Planning Act. The commencement of the new Planning Act provides an educational opportunity for stakeholders to understand how decisions are taken, and by whom.

## Referral entities

The Planning Act requires that certain applications are the subject of referral to “entities” for advice.<sup>33</sup> For general development applications this can include the City Renewal Authority; Conservator of Flora and Fauna; ACT Heritage Council; and for unleased land, the custodian of the land. For developments that require an EIS, referral agencies can include the City Renewal Authority, Conservator of Flora and Fauna, Icon Water, Evo Energy, the Environment Protection Authority, ACT Health, Emergency Services Agency, Transport Canberra and City Services, and the land custodian of unleased land.<sup>34</sup>

A development application may also be referred to any other Government entity if it “will have an adverse impact on a matter which they have an interest in”.<sup>35</sup>

There was a lack of data available to the Review that could confirm the breakdown of which entity advice had or had not been followed, and the frequency with which this occurs. Some data that was available is provided below.

---

<sup>31</sup> ss. 103, 144.

<sup>32</sup> For Part 9.2 of the Planning Act, the Minister is the Minister responsible for the *Nature Conservation Act 2014* (s. 225). An offsets policy describes *how environmental compensation may be made to offset the impact of development that has a significant adverse environmental impact on protected matters* (s. 224). The Minister responsible for the *Environment Protection Authority Act 1997* – currently the Minister for the Environment, Parks and Land Management – may require an EIS for an activity that is not subject to a DA under the Planning Act – EPA Act s. 94.

<sup>33</sup> There are additional referral entities – this report focuses on those who are connected to EPSDD.

<sup>34</sup> Planning Act, s170 (1)(a) and Planning Regulation, s34.

<sup>35</sup> [https://www.planning.act.gov.au/\\_\\_data/assets/pdf\\_file/0016/2323015/entity-referral.pdf](https://www.planning.act.gov.au/__data/assets/pdf_file/0016/2323015/entity-referral.pdf)

## Development Applications and Referrals, 2023

<b>Development applications</b>	963 DAs lodged <sup>36</sup>	948 DAs determined
<b>Review of DAs (internal advisory panels)</b>	43 DAs reviewed by the Assessment Advisory Panel	17 DAs reviewed by Landscape Review Panel
<b>Departures from entity advice</b>	22 (2.3%) partial departures from entity advice <sup>37</sup>	3 (0.3%) full departures from entity advice <sup>38</sup>
<b>Conservator referrals/ opinions</b>	~20 estimated no. referrals to Conservator/week <sup>39</sup>	22 environmental significance opinions by the Conservator <sup>40</sup>

*Source: Information shared by EPSDD*

The Review observes that publication of aggregate data showing when a decision has departed from entity advice, and why, would increase transparency and confidence that entity advice is predominantly taken on board.

### Finding 3

Transparency of decision-making would be improved if the Territory Planning Authority (TPA) published aggregate data about entity advice.

## The Conservator of Flora and Fauna (Conservator)

Certain development applications are referred to the Conservator<sup>41</sup> for advice as a referral entity. In addition, the Conservator is consulted in relation to a draft major plan amendment and the review of the Territory Plan; may provide advice on the boundary of a zone; and is consulted by the Minister responsible

<sup>36</sup> By coincidence, Access Canberra recorded 964 planning complaints in the 2022-23 financial year.

<sup>37</sup> Where conditions have been imposed based on the entity advice or the decision partly departs from the entity advice (and in other parts is consistent).

<sup>38</sup> EPSDD note that parts of these decisions appear to be responding to the entity advice.

<sup>39</sup> Figure provided by office of the Conservator, noting this referred to referrals under the previous planning system before commencement of the new Act.

<sup>40</sup> The Conservator's annex in the 2022-23 EPSDD Annual Report notes that the Conservator was consulted on one draft Territory Plan variation, two EIS scoping requests, three draft EISs, four revised EISs, one revised EIS exemption referral, made recommendations on one licence affecting public land, and provided 22 environmental significance opinions that proposed development was unlikely to have a significant adverse environment impact. The 12-month period for this data (2022-23 financial year) relates to the previous Planning Act.

<sup>41</sup> See Planning Bill Inquiry, Day 2 hearings at p 156. The Executive Group Manager, Environment, Heritage and Water, who is the Conservator, is also the land manager (Parks and Conservation) and oversees the Heritage Council and the Environment Protection Policy team.



for the *Nature Conservation Act* (Nature Conservation Act) about whether an offsets policy needs to be reviewed.<sup>42</sup>

The Director-General of EPSDD appoints the Conservator under section 20 of the Nature Conservation Act. This appointment is a notifiable instrument. The instrument provides that the person from time to time occupying a particular position number is the Conservator. The Conservator's role is currently assigned to the Executive Group Manager, Environment, Heritage and Water in EPSDD. That person reports to the Deputy Director-General, Environment, Water and Emissions Reduction, who in turn reports to the Director-General EPSDD.

The Nature Conservation Act does not provide for any independence or certainty of tenure to the role, unlike the role of the Chief Planner. There is nothing structurally that guarantees their independence although the Director-General has described the role as independent.<sup>43</sup>

The occupant of the Conservator role has other functions and reports via the Deputy to the Director-General in his Group Manager role, for example, in relation to Parks and Conservation.<sup>44</sup>

The EPSDD Annual Report includes a specific section on the Conservator's discharge of statutory functions as per the Annual Report Directions.

## The Heritage Council

The Heritage Council (the Council) is a statutory body established under the *Heritage Act 2004* (the Heritage Act). A key function of the Council is to work within the land planning system to achieve appropriate conservation of the ACT's natural and cultural heritage places and objects.<sup>45</sup>

The Heritage Act provides that the Chief Planner is a member of the Heritage Council, as is the Conservator. However, these two members are not eligible to vote on questions being decided by the Council (which may be comprised of up to nine other members). The term "questions" is not defined but presumably may be as broad as any decisions of the Council in relation to its functions under the Heritage Act. This is an unusual governance approach and may cause further confusion about the reach and influence of the Chief Planner.<sup>46</sup> The Review notes that recommendation 9 of the Heritage Inquiry was that the ACT Government consider removal of the Chief Planner as a member of the Council.

The Council is a prescribed referral entity for a development application if the application relates to a place or object registered or provisionally registered or nominated under the Heritage Act or if the TPA is aware that the proposed development may impact an Aboriginal object or place. The TPA must consult with the Council on a number of matters, such as major plan amendments and the Territory Plan. It is not clear

---

<sup>42</sup> s 67 (draft plan amendment); s 91 territory plan review; s. 87 Zone boundary; s. 227 offsets.

<sup>43</sup> See Planning Bill Inquiry, Day 2 hearings, 2022, p166: "Mr Ponton: They [the Conservator] are independent. The Conservator has other functions that he reports to me on—in relation to Parks and Conservation, for example—but he does not report to me in relation to matters of the Conservator. That is direct to the minister." The Conservator is also the land manager (Parks and Conservation), regulator, and holds portfolio responsibility for the Heritage Council and the Environment Protection Policy team.

<sup>44</sup> See EPSDD organisational chart at Appendix 6 and Planning Bill Inquiry, Day 2 hearings, 2022, p166.

<sup>45</sup> s 18 Heritage Act

<sup>46</sup> The role of the Conservator is also complicated, given that as Conservator that individual is a non-voting member of the Council who is also responsible for the secretariat and furthermore regulates land management given the responsibilities for Parks and Conservation. The Heritage Council is supported administratively by ACT Heritage, which sits under the Executive Group Manager, within the Environment, Water and Emissions Reduction Division of EPSDD.

whether this consultation will include questions being decided by the Council and therefore what the role of the Chief Planner or Conservator would be, although the Review understands it would be consistent with past practice for the Chief Planner and Conservator to not participate in such matters.

The Council is supported in its work by ACT Heritage, a branch within the Environment, Heritage and Water Division, led by the Executive Group Manager (who also holds the role of Conservator).

The EPSDD Annual Report included a specific section on the Council in its 2022-23 report, which noted:

During 2022-23 only the new Council met, with their first meeting held on 13 June 2023. The focus of the Council's first meeting was on induction and briefings on the work completed over the previous year by ACT Heritage. Over 2022-23, seven nominations to the ACT Heritage Register were accepted by ACT Heritage under delegation. ACT Heritage also assisted the ACT Heritage Council in issuing 728 pieces of advice and/or approvals on Heritage Act applications, submissions, and referrals; 310 were in response to Heritage Act applications and submissions, and 418 were in response to referrals from other government agencies.<sup>47</sup>

Heritage advice on planning matters in 2022-23 was provided by ACT Heritage who act under delegation of the Heritage Council.

## **The Environment Protection Authority (EPA)**

The EPA is a public servant appointed under the *Environment Protection Act 1997* (the Environment Protection Act).<sup>48</sup> The Environment Protection Act provides that the EPA is appointed by the Director-General (of EPSDD). However, the ability to appoint the EPA has been assigned to the head of Access Canberra, as administratively this role sits in that agency as the shared regulatory service of the ACT public service.<sup>49</sup> The Environment Protection Act does not provide for any independence or certainty of tenure to the role. The role is subject to the direction (in certain matters) of the Minister for the Environment, Parks and Land Management, who is also responsible for environment protection policy.

Under section 13 of the Environment Protection Act, the EPA may delegate functions under that Act. The Office of the EPA is staffed by the equivalent of 20 full time officers, most with specific technical skills required to provide its advice and regulatory functions. The Office of the EPA sits within Access Canberra, while its policy and regulatory frameworks are developed by EPSDD.

The EPA is a prescribed referral entity for a development application if the application requires an environmental impact statement.

During 2022-23, the EPA received and reviewed 548 DAs referred from the then Planning and Land Authority. Internal EPA analysis showed that the EPA provided comments on 95% of the DAs referred to it. Comments were made in relation to the five environmental protection domains of noise, contaminated lands, hazardous materials, air quality, and water (construction and sediment). The analysis indicated that more than 80% of the EPA's comments were fully included in the final decision of the Planning and Land Authority. The data set does not indicate the percentage of decisions made contrary to advice, but simply

---

<sup>47</sup> EPSDD Annual Report 2022-23 p 364

<sup>48</sup> s 11, EPA Act

<sup>49</sup> <https://www.legislation.act.gov.au/View/ni/2017-465/current/html/2017-465.html> Public Sector Management (Head of Access Canberra Functions) Declaration 2017

that the comments were included in the decision. This data was provided to the Review but is not usually publicly available.

The EPA reports on its activities as part of the Access Canberra Annual Report and appears before Assembly hearings as part of Access Canberra. The performance of their regulatory and environmental management functions is subject to scrutiny by the Legislative Assembly and the broader community.

The EPA collaborates with EPSDD in policy development, including with the Environment Protection Policy unit, to maintain clear policy positions on activities regulated through the Environment Protection Act and other relevant legislation. It also collaborates with the Office of Water to maintain clear policy positions on water resources regulation activities, including those within the *Water Resources Act 2007*, and environment protection matters focused on water.

Environment protection policy staff are located in EPSDD in the Environment, Water and Emissions Reduction Division, and oversee the legislation and environment protection policy.

## Design Review Panel and Government Architect

Section 95 of the Planning Act establishes the Design Review Panel (DRP). Section 97 provides for membership of the DRP. The Government Architect is a member of (and currently co-chairs) the DRP.<sup>50</sup> The DRP is comprised of members determined by the co-chairs and convened on a sessional basis. The Government Architect and planning website note that an expression of interest process is planned in 2024 to “identify suitably qualified panel members”.

A proposal *must* be referred to the DRP under the Planning Act before submitting a DA for certain proposals.<sup>51</sup> The DRP advice must then be provided by the DRP to the TPA along with the DA. Certain other developments may also be referred.<sup>52</sup>

The Government Architect role was created by the ACT Government in 2010.<sup>53</sup> The role is referenced in the Planning Act, however, the role itself is not created by statute. It is filled on a part-time basis and appointed by EPSDD via a procurement process.

The Government Architect functions include making contributions to the overall planning strategy for the ACT – that is, influencing on a systemic basis, but the Review understands that this has been limited.<sup>54</sup>

EPSDD provides secretariat support to the DRP via the Planning and Urban Policy Division.

---

<sup>50</sup> The Chief Planner of the National Capital Authority is also a member and co-chair of the DRP, and chairs for proposals where the future decision will be made in whole or in part by the NCA.

<sup>51</sup> s 100: the proponent must consult with DRP for a prescribed development proposal; if the Minister requires DRP consultation (s.100(2)); if the proponent initiates DRP consultation; and, in current Planning Regulation, s11, if the DA relates to: a building with 5 or more stories; or proposals in certain zones that would increase floorspace of a shop by more than 2000m<sup>2</sup>.

<sup>52</sup> Including Territory Priority Projects, or proposals where the Minister determines a development proposal is likely to be of economic, social or environmental significance to the Territory - s 100 (2).

<sup>53</sup> EPSDD, 2023, <https://www.planning.act.gov.au/about/act-government-architect>

<sup>54</sup> The Review is advised that the Government undertook a merit-based selection process for the role and the occupant has held a contract for services with EPSDD since 2016. The current instrument of engagement is publicly available on the ACT Contracts Register <https://www.tenders.act.gov.au/contract/view?id=209788> accessed 19 January 2024.

## The City Renewal Authority (CRA) and the Suburban Land Agency (SLA)

The CRA is one of two ACT agencies responsible for land development. The CRA is a corporation established under the *City Renewal Authority and Suburban Land Agency Act 2017* (CRA and SLA Act). The CRA is responsible for land development in a defined precinct including the City and Northbourne Avenue. The CRA is overseen by a Board and reports to the Chief Minister. The Minister responsible for the CRA must set a statement of expectations for the board each year setting out the government's requirements and priorities in relation to urban renewal in an urban renewal precinct.<sup>55</sup>

The CRA is a referral entity for proposals requiring an EIS if the application relates to land in an urban renewal precinct.

EPSDD is the administering Directorate for the CRA. This means that the EPSDD Director-General is responsible for the administration of the relevant parts of the CRA and SLA Act that govern the CRA and for the function of urban land development. EPSDD provides corporate and governance support for the CRA including people and capability, information management, freedom of information, legal support, ICT systems, government services, facilities and fleet.<sup>56</sup>

The SLA is a "public non-financial corporation" and is responsible for developing and releasing government-owned land (outside the CRA zones) for residential, commercial, industrial and community purposes. The SLA is a referral entity for certain development proposals if the application relates to land for which the SLA is the custodian. The SLA reports to the Minister for Housing and Suburban Development.

Like the CRA, the SLA is established by the CRA and SLA Act, overseen by a Board, and receives corporate and governance support from EPSDD under a service agreement covering areas including people and capability, governance and legal services, information management, fleet management and due diligence.<sup>57</sup> This means that the EPSDD Director-General is responsible for the administration of the relevant parts of the CRA and SLA Act that govern the SLA and for functions relating to suburban land development.

## The Environment, Planning and Sustainable Development Directorate (EPSDD)

The Environment, Planning and Sustainable Development Directorate (EPSDD) works to take care of Canberra, the Canberra region, its citizens, animals, plants, land, and waterways. EPSDD is responsible for a wide range of policies and programs. These include climate change and energy policy, nature conservation, environment protection policy, water, heritage, strategic and statutory planning, development approvals, building and land policy and urban design.<sup>58</sup>

The organisational structure that the Director-General has set for EPSDD separates those who set planning policy; those who have statutory planning decision-making roles; and those with environmental portfolio responsibilities that also provide advice on environment-planning matters (see **Appendix 6**). This

---

<sup>55</sup> CRA and SLA Act, s. 17

<sup>56</sup> City Renewal Authority Annual Report, 2022-23, pp20 – 21.

<sup>57</sup> Suburban Land Agency Annual report 2022-23, p74.

<sup>58</sup> <https://www.planning.act.gov.au/about> accessed 29 January 2024.

delineation makes a positive contribution to good governance as it is generally desirable that those who set the rules are not responsible for applying them.

EPSDD has a wide range of environmental functions and in fact more staff working on environmental matters than planning (see table). These include climate change, energy, heritage, traditional custodian engagement, parks and conservation.

### EPSDD Staffing by function 2022-23

Division	Function of area	Headcount
Climate Change and Energy	Environment	114
Corporate Services and Operations	Corporate	105
Development and Implementation	Planning	45
Environment, Heritage and Water	Environment	364
Office of the Commissioner Sustainability and the Environment	Environment (statutory office)	7
Office of the DDG - Environment, Water and Emission Reduction	Environment	3
Office of the DDG - Planning and Sustainable Development	Planning	2
Office of the Director-General	Office of the Director-General, communications and engagement	31
Planning and Urban Policy	Planning	56
Statutory Planning	Planning	101
<b>Total</b>		<b>828</b>

*Source: Adapted from EPSDD Annual Report, 2022-23*

# Part 3: Consideration of Committee Recommendations

## Committee Recommendation 11: Dual Role: Director-General and Chief Planner

The Director-General of EPSDD, in addition to the role and functions associated with being the head of a directorate, also holds two statutory roles – one being the Chief Planner and the other as Technical Regulator under the *Utilities (Technical Regulation) Act*.<sup>59</sup>

The current and two previous Directors-General have held the equivalent role to the Chief Planner concurrently with the Director-General role, meaning that this arrangement has been in place for many years.<sup>60</sup> The Planning Act does not require the Chief Planner role to be filled by the Director-General. This role could be held by another senior officer.

The Assembly Motion related to this Review required Recommendation 11 to be considered, which was:

The Committee recommends that the ACT Government review the current arrangement whereby the role of the Chief Planner and the role of the Director-General of EPSDD are held by the same person, to see whether better governance and potentially better outcomes could be achieved by separating those roles.

The Review was unable to determine whether **better outcomes** would be achieved by separating the two roles, due to the recent commencement of the Planning Act. The Review has instead focused on whether **better governance** could be achieved by separating the roles.

Of all of the governance questions, this was the most complex to consider. There are several challenges that need to be managed that are a direct result of the “dual role” arrangement. However, it is understood that to the extent possible, the Director-General has implemented solutions which mitigate these challenges.

The Review also notes that Terms of Reference require us to provide independent advice as to whether *better* governance could be achieved, not if the governance arrangement in place is sound. The fact that the Chief Planner/Director-General works to mitigate challenges speaks to the conclusion that the current governance structure could be improved. It also highlights that good governance is currently reliant on the

---

<sup>59</sup> On 14 April 2022 the chief planning executive was appointed for the period 14 April 2022 to 13 April 2027. The appointment transfers over to the role of Chief Planner by virtue of the transitional provisions in the Planning Act.

<sup>60</sup> The government response to the 2011 Hawke review included two changes to the Chief Planner role: firstly, the former planning authority (ACTPLA) was moved inside a government agency as part of the then Environment and Sustainable Development Directorate; and secondly, the Chief Planner was now also a Director-General, appointed by the Head of Service under the amended PSM. This arrangement has not been amended in the new Planning Act; the Chief Planner remains the Planning Authority; and the Chief Planner is also the Director-General of a public sector entity with oversight of both planning and environment.

integrity of the person who holds the role, rather than good governance being achieved through structural design. This presents a vulnerability to the governance system.

## Compatibility

The Review's conclusion is that there is an element of incompatibility between the functions of the Director-General of a public service directorate with wide policy responsibilities and a statutory role that has significant powers and responsibilities, such as those of the Chief Planner. This incompatibility would be minimised if the statutory powers and responsibilities were not so extensive, or if the dual role was held by a senior public servant who is not also a Director-General.

The Victorian Public Service Commission<sup>61</sup> explains the nuance of the roles:

Public entities operate at 'arm's length' from Ministerial direction on a day-to-day basis. They generally have a high degree of autonomy in the operational aspects of their role but are subject to varying levels of Ministerial direction regarding compliance with Government policies and strategies. ...

A department is the Minister's principal source of advice on the performance of public entities and on emerging risks within his or her portfolio.... [and] also has a significant role in policy-making, including:

- contributing long-term considerations and subject matter expertise in developing new and updated policy approaches
- providing policy options to Ministers to support them and the government of the day in implementing their agenda.<sup>62</sup>

Specifically, the Director-General, EPSDD is responsible for fulfilling the functions outlined in the *Public Sector Management Act 1994* (Public Sector Management Act). This includes the overall leadership, management and administration of the Directorate, such as setting strategic direction, overseeing operations, managing and allocating internal resources, and providing advice and reports to the Directorate's Ministers and Head of Service.

---

<sup>61</sup> VPSC, 2022 (Public Entity Types)

<sup>62</sup> VPSC, 2022 (Secretaries what to consider) <https://vpsc.vic.gov.au/ethics-behaviours-culture/inform-and-advise-ministers/secretaries-what-to-consider-when-advising-ministers/>

## Section 19 of the Public Sector Management Act

1. A director-general is—
  - a) responsible for leadership of an administrative unit and leadership in the service; and
  - b) responsible for the administrative unit and to the head of service.
2. A director-general has the following functions in relation to the director-general's administrative unit:
  - a) to provide advice and reports to the Minister responsible for the administrative unit and the head of service on matters relating to the administrative unit;
  - b) to manage the business of the administrative unit;
  - c) any other function given to the director-general—
    - i. by the Minister responsible for the administrative unit; or
    - ii. by the head of service; or
    - iii. under this Act or another territory law;
  - d) to exercise a function mentioned in paragraphs (a) to (c) taking into account the responsibilities of the government as a whole, including by collaborating with other directors-general.
3. A director-general has the following leadership functions:
  - a) to provide advice to the head of service about the development and coordination of whole-of-government strategies;
  - b) to lead the implementation of whole-of-government strategies;
  - c) to implement, at the direction of the head of service—
    - i. strategies for the administration of the service; and
    - ii. responses to critical or potentially critical issues;
  - d) to work efficiently, effectively and constructively with other directors-general to ensure a whole-of-government focus and promote cooperation and collegiality within and between administrative units;
  - e) to promote and uphold in the service the public sector values, the public sector principles and the conduct required of a public servant, including by personal example;
  - f) any other function given to the director-general by—
    - i. the Minister responsible for the administrative unit; or
    - ii. the head of service.

The Director-General of EPSDD is also responsible for the provision of corporate and governance support to the Commissioner for Environment and Sustainability, the Government Architect, the Heritage Council, the SLA and the CRA.

The Chief Planner is a statutory position, a corporation and a public sector body that has substantial responsibilities, powers and authority.



The Chief Planner is always the Territory Planning Authority (Section 16(3) – “*the chief planner is the territory planning authority*”), though as noted previously there are also Chief Planner-specific roles. This means the powers and functions of the individual who holds both roles include (but are not limited to):

- decision-making about developments (as the TPA and as Chief Planner).<sup>63</sup> This includes being the decision-maker for Development Applications where the CRA or SLA is the proponent (noting the CRA and SLA are part of the Director-General’s portfolios)
- ensuring decisions taken on development applications will deliver the desired planning outcome (noting this gives primacy over other outcomes which may be within the Director-General’s wider portfolio responsibilities) (as the TPA and Chief Planner)
- promoting high-quality design and good planning outcomes consistent with the objects of the Planning Act (as the TPA)
- advising on planning and land policy, promoting and implementing planning strategy; and preparing and administering the Territory Plan (as the TPA)
- consulting and receiving advice from referral entities and other bodies listed in the Planning Act e.g. Government Architect (noting several of these bodies are the administrative responsibility of the Director-General) (as the TPA)
- ensuring decision-making is consistent with “matters that must be addressed” in the Design Guides e.g. ACT Biodiversity Sensitive Urban Design Guide (noting many of these documents are informed by work done by areas of the Director-General has oversight of) (as the TPA).

In undertaking these functions, the Chief Planner can be directed by the Planning Minister.

The significant responsibilities attached to both of these roles does result in a concentration of power in one individual.

It appears that where possible, the incumbent has actively sought to manage compatibility tensions via administrative actions. The Review commends the incumbent for the steps that he has taken. However, there is a limit to the extent these actions can address the incompatibility. While the authority may be delegated, the accountability cannot. Therefore, even when the Director-General/Chief Planner is far-removed from the day-to-day activities as a result of delegations, the accountability for each of the roles is retained.

## Competing obligations to Ministers

The 2004 Uhrig Review of the Corporate Governance of Statutory Authorities and Office Holders, while now over 20 years old, provides relevant guidance around governance arrangements for relationships between Ministers, the Executive and statutory office holders.

In comparison to the direct relationship between a Minister and the portfolio department, statutory authorities often operate with a greater level of separation. It is this separation, or ‘independence’, that creates the need for robust governance structures. The need for governance structures increases when independence is combined with power. ...[Further] the portfolio

---

<sup>63</sup> Unless they are “called in” by the Minister and Chief Minister as Territory priority projects. The Chief Planner (but not the TPA) can also approve a development application contrary to entity advice (Planning Act s. 190 (2)).

secretary needs to be in a position to provide advice in relation to all matters within the relevant Minister's portfolio.<sup>64</sup>

A Director-General is directly accountable to their portfolio Ministers. The DG EPSDD supports five Ministers covering seven portfolios:<sup>65</sup>

1. Planning (Minister Steel)
2. Land development – CRA, some SLA functions (Chief Minister Barr)
3. Housing and Suburban Development – SLA (Minister Berry)
4. Water, Energy and Emissions Reduction (Minister Rattenbury)
5. Environment, Parks and Land Management (Minister Vassarotti)
6. Sustainable Building and Construction (Minister Vassarotti)
7. Heritage (Minister Vassarotti).

The role of the Director-General is crucial in implementing government policies across multiple portfolios and delivering public services effectively and efficiently in the ACT.

Secretaries are responsible for ensuring their department implements the agenda of the government of the day. Once the Minister has made a decision or given the department a direction, a Secretary must ensure that their department implements that decision professionally and responsively...<sup>66</sup>

The role of the Director-General is to work across all portfolios in a way that ensures multiple government priorities, which can sometimes be competing priorities, are navigated, managed and progressed. It is a common phenomenon across Australia for a department or directorate lead to report to more than one Minister. A Director-General may be tasked by any of their Ministers to progress a government's priority in a way that has implications for planning and development outcomes.

The Planning Minister can also direct the Chief Planner. The Chief Planner is obligated to pursue planning objectives, even when there is a tension with other portfolio priorities. Considering the important wider stewardship role of the Director-General, this may create tensions that could be avoided if the dual roles were separated.<sup>67</sup>

If the two roles were separated, the Chief Planner would be bound by their statutory obligations, but the role of the Director General would be free from that obligation – providing Ministers and stakeholders with greater confidence that delivery of planning and development outcomes does not mean that the Director-

---

<sup>64</sup> Uhrig Review, pp 7-8.

<sup>65</sup> Administrative Arrangements at March 2024.

<sup>66</sup> VPSC, 2022 (Secretaries what to consider...)

<sup>67</sup> The Review notes that the CP/DG has taken many steps to mitigate tensions that arise from the dual role. However, these actions do not appear to be well known, as indicated by some stakeholders who contributed to the Committee and to the Heritage Committee Inquiry. This has contributed to perceptions of concerns around the primacy of the planning portfolio over other portfolios, for example *"The Committee is of the view that, given the perceived lack of weight given to Heritage Council advice by the Territory Planning Authority, there is a need for greater transparency in the decision-making of the Territory Planning Authority, particularly in relation to heritage places, so that Canberrans can have confidence in the planning system's ability to consider heritage amongst competing factors. Placing an onus on the Territory Planning Authority to state why they have disagreed with Heritage Council advice in planning decisions will go some way to ensuring this."* Standing Committee on Environment, Climate Change and Biodiversity, Report 9, October 2023, Inquiry into ACT Heritage Arrangements p30: [https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0004/2307019/Report-9-Inquiry-into-ACTs-heritage-arrangements.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0004/2307019/Report-9-Inquiry-into-ACTs-heritage-arrangements.pdf).

General does not fully support the other portfolio priority (for example, if a development application decision has permitted an unfavourable heritage or habitat outcome).

## Appointments and resourcing

The Director-General has the ability to influence appointments to certain referral entities, including the Conservator, which is a position held by an EPSDD employee.

Engagement to senior executive positions in the ACT public sector is by the Head of Service (or delegate).<sup>68</sup> A Director-General is at liberty to actively participate in and influence recruitment, appointments, or re-appointments when a change is first initiated, and may participate on a recruitment/selection panel. In effect, the appointment to any Executive role (including the Executive role the Conservator occupies) can be heavily influenced by the Director-General.<sup>69</sup> It is also open to the Director-General to change which position (number) holds the role of Conservator.<sup>70</sup>

When the Director-General is responsible for the management and has scope to influence an appointment process for a role that is tasked with providing independent advice to another role they occupy (Chief Planner), it would be ideal from a governance perspective if it was clear, through both actual and perceived separation, that the advice-giving role is not subject to influence. There is nothing in the framework to ensure this in the situation where the Director-General is the Chief Planner, aside from the good intent of the Director-General/Chief Planner. This intent may be evidenced through actual processes, but this is not visible outside of the directorate.

The Director-General of EPSDD is also responsible for the provision of corporate and governance support to the Commissioner for Environment and Sustainability, the Government Architect, the Heritage Council, the Suburban Land Agency and the City Renewal Authority. Each of these agencies have an interface with the Territory Planning Authority and Chief Planner role. If the Director-General was not also the Chief Planner, decisions around appointments and resourcing would have a greater separation and by extension a perception of independence from influence.

## Confluence of oversight

The Director-General is responsible for overseeing the provision of advice to the Environment, Parks and Land Management Minister and allocation of internal funding to the Environment, Water and Emissions Reduction (EWER) part of EPSDD that serves this Minister. This includes work programs and outputs that are central to informing the ACT Biodiversity Sensitive Urban Design Guide. Equally, the Chief Planner and TPA must give regard to the Planning Act interface with other pieces of legislation, e.g. adopting definitions and restrictions of other Acts<sup>71</sup> owned by other Ministers which the Director-General serves, such as the *Urban Forest Act 2024*; the Nature Conservation Act; and the Heritage Act.

It is understandable that stakeholders may hold the perception that by virtue of being the same person, the Chief Planner can bring influence to bear when fulfilling Director-General duties that encompasses advice

---

<sup>68</sup> Public Sector Management Act, s31(2) and Public Sector Management Standards s.54.

<sup>69</sup> The Head of Service engages all Senior Executive Service members on advice from the relevant Directorate.

<sup>70</sup> Section 20 of the Nature Conservation Act states that the Director-General must appoint a public servant as the Conservator, if satisfied that the person has suitable qualifications and experience to exercise the functions of the Conservator.

<sup>71</sup> e.g. Planning Act s.388; s.430

on legislation or other documents that provide checks and balances, or guidance, to planning decisions – such as the Heritage Act or Biodiversity guidelines.

In the process of fulfilling their role, the Conservator will at times develop advice for the Minister for the Environment. This advice may or may not completely bypass the Director-General/Chief Planner. Regardless of any arrangements in place, it is difficult to see how the Conservator can fulfil their role free from any consideration of how that advice will be received by any person holding the Director-General or Chief Planner role.

However, the Review has observed, and been told, that there are benefits that come from the environment and environment office holders being in the same directorate as planning. The statutory office holders can work together productively within the directorate to resolve tension and facilitate shared outcomes. The Review does not advocate for a separation of the portfolio. Rather, the primary issues considered as a part of this Review could be addressed if a different executive held the role of Chief Planner.

### **Role Clarity and Delineation**

Role clarity, and in what capacity an officer is operating, needs to be in place not just for the benefit of the officer discharging their duties, but for the stakeholders who are in receipt of services or advice.

While the Chief Planner/ Director-General is clear in what capacity advice is being given, the Review has heard that there can be a lack of clarity for those receiving the advice. The nuanced role delineation and an understanding of the separate obligations of the Director-General /Chief Planner appears to not be clear to all audiences. In other words, people interacting with the Chief Planner / Director-General are not always clear “which hat” is being worn.

A public example is that the Director-General accompanied the Government Architect to the Committee Inquiry. The Committee questioned the attendance of the Chief Planner / Director-General:

MR PARTON: Can I say, straight up, that it sort of seems weird, Mr. Ponton, that we are speaking to you in this context, in that, essentially, you are the architect of the bill. So to ask you in the context as a member of the National Capital Design Review Panel what your thoughts are on your own bill seems a little strange.

Mr. Ponton: If I could respond to that, Mr. Parton. First of all, I am not here as a member of the National Capital Design Review Panel. But I am responsible within the portfolio administrative arrangements for the design review panel. It was through my recommendation to Minister Gentleman that the panel was first established. I have responsibility and I also provide the secretariat support to the National Capital Design Review Panel.

In addition to that, if you review the administrative arrangements, the Government Architect sits within Minister Gentleman’s portfolio of responsibilities, and the relevant admin unit for that is the Environment, Planning and Sustainable Development Directorate, and I am the agency head for that administrative unit. So it is completely appropriate, I would suggest, that I attend, as Minister Gentleman has asked me to do, to support the Government Architect, given that it does sit within my portfolio responsibilities, and to support any questions in relation to the National Capital Design Review Panel, given that, as I said, I have portfolio responsibility for that and

provide the secretariat support and the procurement processes for the procurement of the panel itself.

The Review also heard that there can be difficulty delineating between roles. This was described as an issue when the occupant of the Director-General role can use information obtained in the capacity of Chief Planner that is relevant to the discharge of functions as Director-General, or vice versa. For example, in the Ginninderry Joint Venture case study below, the original role of the Director-General as the Territory's representative in the Joint Venture had the potential to conflict with the responsibilities of the Chief Planner as a decision-maker. The governance arrangements required a dedicated treatment for this conflict that would not otherwise exist if the Chief Planner role was held by someone other than the Director-General.

The following case study was provided by the SLA, who were clear that the Director-General/Chief Planner took appropriate steps to mitigate the challenges of holding multiple roles.

### **Ginninderry Joint Venture**

The Ginninderry Project is a 'Joint Venture' (Ginninderry JV) between the ACT Government and Riverview Developments (Riverview) which will develop a master planned community in West Belconnen of up to 11,500 dwellings and associated infrastructure that spans the ACT / NSW border. Riverview Projects is the development Manager for the Joint Venture.

The role of 'participant' in the Joint Venture from an ACT Government perspective is fulfilled by the Director-General of EPSDD. 'Participant' is effectively the entity that has entered into the Joint Venture Agreement. The Director-General is responsible under the Administrative Arrangements for the relevant parts of the City Renewal Authority and Suburban Land Agency Act that govern the SLA.

The Suburban Land Agency (SLA) has acted as the Agent of the Territory in the Ginninderry JV since its inception in 2016. This means having all operational responsibility for the Joint Venture from a government perspective. Officers of the SLA work closely with the Development Manager on all aspects of the Joint Venture operations, Government representatives on the Joint Venture Board are either SLA Board Members or Executives, and the accounts of the Joint Venture form part of the SLA's financial statements.

In recognition of this, the Director-General provided an Agency Instruction to the Chair of the Suburban Land Agency Board in June 2018 that, in part, directed the SLA to do all things necessary and expedient in the carrying on of the development of the land the subject of the Joint Venture ... Whilst this Instruction reflected what had been happening in practice, it also was an acknowledgment of the multiple roles of the Director-General, particularly those legislative and regulatory in nature, which placed constraints on how the Director-General could interact with the Joint Venture. The SLA on the other hand, with its development focus and enabling legislation, was able to operate more freely in working towards the shared objectives of the Joint Venture Partners.

In particular, the Director-General's statutory role as Chief Planner places obligations on him that require him to act independently and consistent with the requirements of the Planning Act. He also has statutory responsibilities as the Utilities Technical Regulator, amongst other roles.

The Joint Venture, as does any developer, must seek relevant approvals for all its activities, many of which are under the delegated authority of the Director-General. This sets up an incompatibility between the Director-General's obligations as Chief Planner, and his obligations as the Territory's representative in the Joint Venture. The DG therefore has separated himself operationally from the Joint Venture whilst still maintaining responsibility for overall governance issues.

In further recognition of the role of the SLA, Government agreed in 2023 to the substitution of the Territory with the SLA as Joint Venture participant. Joint Venture partners are currently working to give effect to this arrangement with a refresh of the Joint Venture Agreement.

## **“Better” governance**

As discussed through this section of the report, the Director-General/Chief Planner ensures treatments are in place to manage the governance challenges presented from holding the Chief Planner role. It is also noted the arrangements have been in place for some time, and the Review is not aware of any evidence that the integrity of decision-making in the planning processes has been compromised by the dual role arrangement.

Ultimately, however, and on balance, the Review concludes there are two main reasons the governance arrangements would be “better” if the roles were separate.

The first relates to the perception of concentrated power and responsibilities. Regardless of the steps taken to mitigate conflicts and ensure integrity, the scope of powers and influence that sit with a Director-General (resourcing, appointments, Ministerial advice, strategy leadership), when combined with the authority, powers and obligations of the Chief Planner, are significant. As stated above, authority may be delegated, but accountability cannot. As a result, the degree of influence this gives one person appears from the evidence provided to other Inquiries to have impacted on the trust and confidence in the system by some stakeholders. The shift from a prescriptive process to an outcomes-based model has created an opportunity for stakeholders to express these concerns. This was demonstrated in the contributions to, and recommendations from, the Committee Inquiry Report. In assessing governance arrangements, stakeholder trust and perception are material considerations.

The second driver for this conclusion is that the integrity of a governance system should not be reliant on an individual's good character. Governance should not be vulnerable to personality, but structurally robust no matter who holds positions of power. A better governance model would split these roles, delivering a governance framework that had greater structural clarity.

### **Finding 4**

The dual role arrangement where the powers of the Director-General and Chief Planner reside with the same person results in a significant concentration of responsibility in one individual. These responsibilities are not always compatible.

### **Recommendation 2**

Separating the role of Chief Planner from the responsibilities of the Director-General, EPSDD would deliver a better governance arrangement.

## Committee Recommendation 12: Frank and Fearless Advice

The Standing Committee on Planning, Transport and City Services (the Committee) recommendation 12 was:

The Committee recommends that the ACT Government review governance and administrative arrangements to ensure that entities and individuals that are intended to provide frank, fearless and independent planning advice to the Chief Planner, can do so.

The commentary provided in the Government response to this recommendation was as follows:

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

The Chief Planner has no role in appointing, dismissing, directing, tasking or remunerating staff employed by EPSDD, or any other entity within the ACT Public Service. The EPSDD Director-General’s powers, roles and responsibilities for recruitment and related matters are established under the Public Sector Management Act 1994, Public Sector Management Standards 2016, and ACT Public Sector Enterprise Agreements. These powers have been delegated to various officer levels throughout the directorate.

Executive contracts (for example, the Conservator of Flora and Fauna) are administered centrally by the Chief Minister, Treasury and Economic Development Directorate on behalf of the Head of Service, who has responsibility for Executive appointments, suspensions, and terminations (see the Public Sector Management Act 1994). Remuneration of Executives is set by the ACT Remuneration Tribunal, not the Director-General.<sup>72</sup>

The Review agrees that a number of initiatives have ensured positive contributions to good governance – a strong integrity framework (discussed in detail in **Appendix 8**), thoughtful organisational design, and appropriate use of delegations. The fact that some referral entity advice is not followed may even suggest there is a culture of contestability and acceptance that referral bodies – even if not technically independent – are free to present alternative views.<sup>73</sup> Generally, however, the referral entity advice appears to be followed. For example, the Conservator indicated that in the majority of cases, particularly with a significant development, the advice provided by the Conservator is followed. The statistics reflect this – EPSDD estimates that only 2.3% of decisions partially depart from entity advice and less than 0.3% of decisions represent a full departure from entity advice.

However, the commentary in this response paints the arrangements in the most favourable light. It is apparent from delegations under the Planning Act that the Chief Planner does effectively have a role in

---

<sup>72</sup> ACT Government response to Standing Committee Inquiry into the Planning Bill.

<sup>73</sup> One of the highest scores in the 2023 EPSDD staff survey results was “autonomy” at 86%, although the following two factors were recorded in the top 5 barriers to performance: “Multiple layers of decision-making within my organization”; and “authority for decision-making is at a higher level than required”.

tasking staff employed by EPSDD – the Review was told that staff in Statutory Planning in EPSDD make almost all the decisions assigned to the Chief Planner. Even if this tasking is asserted to be done by the Director-General, it is difficult if not impossible in this context to separate the Chief Planner from the Director-General as they are the same person.

The response about the EPSDD DG's powers in relation to executive contracts also paints this in the most favourable light, as the Review has been advised that the DG is able to influence these employment matters as discussed above.

### **Comparable tenure protections**

The independence of planning decisions from political interference is grounded in the tenure protection afforded to the Chief Planner. This is one of several legislatively based characteristics of the Chief Planner's role that differ significantly from the referral entities involved in providing environmental (and heritage) advice. The fact that the Chief Planner, who is the Director-General, has these protections appears to elevate the role of Chief Planner. It contrasts with the framework for referral entities who are not afforded these protections and are a part of the agency, and subordinate in the hierarchy of the agency the Chief Planner leads as Director-General.

Governance arrangements would be strengthened if the tenure of the Conservator and Government Architect, roles which are charged with providing frank and fearless advice to the Chief Planner, was not dependent upon decisions of the same person who also holds the role of Chief Planner (i.e. the Director-General).

On this basis, the Review makes the following finding and recommendation:

#### **Finding 5**

The legal framework for roles involved in the planning system (other than the Chief Planner) could be enhanced to better protect the independence of referral entities and their ability to provide frank and fearless advice – for example, the Conservator of Flora and Fauna (Conservator), the ACT Government Architect and the Environment Protection Authority (EPA).

#### **Recommendation 3**

The person holding the role of Chief Planner should not have the power to influence the appointment of the Conservator and Government Architect positions. Governance arrangements would be strengthened if appointments to the Conservator, EPA and Government Architect, all roles which are charged with providing frank and fearless advice to the Territory Planning Authority, sat with a Minister or an officer who did not also hold the role of Chief Planner.



## Committee Recommendation 16: Role of independent experts

The Committee's recommendation 16 was specifically concerned with inserting independent experts into the decision-making process that involves overriding entity advice:

The Committee recommends that the ACT Government explore opportunities to employ an independent professional body of experts who can feed into the decision-making process when overriding entity advice under clause 187 of the Bill.

The Government's response to the Committee's recommendation was:

The Authority is an independent body (of professional experts) established to consider expert advice and make decisions, and the implementation of this recommendation would duplicate the functions and role of the Authority and other parts of the ACT Public Service and would be costly and inefficient, given that it would effectively require the creation of another government entity duplicating existing entities.<sup>74</sup>

The Review notes that the data EPSDD provided indicates that there were 948 applications determined in 2023, of which 22 had a partial departure from entity advice and only 3 decisions were full departures from entity advice.

In many other jurisdictions significant development applications are considered by a panel of experts. For example, in South Australia, Assessment Panels are used to make decisions on more complex developments and on matters which are prescribed by regulations. An Assessment Panel may review an assessment decision made by the Assessment Manager (if requested to do so by an applicant). In Tasmania, a Development Assessment Panel is used for major project decisions. In Greater Sydney, local planning panels (LPPs) determine development applications on behalf of councils where, for example, proposed projects receive a high number of complaints, or proposed projects are sensitive; for example, they involve the demolition of heritage buildings or destruction of other community assets. **Appendix 3** is a table of arrangements in different jurisdictions. In the ACT the decision was taken that the new Act does not establish a development assessment panel model.

The CRA noted that in some other jurisdictions a model including independent experts in decision-making panels is used for applications where:

- Significant investment is occurring
- Projects are likely to receive many complaints
- Projects of high sensitivity, such as those including heritage buildings; or
- Projects have strategic importance or are occurring in sensitive locations.

The Committee recommendation suggests using experts to "feed into" decision making when decisions may override entity advice. This could take the form of the provision of advice. The Review notes there currently is an advisory panel in place to support decision-making. This is comprised of internal government

---

<sup>74</sup> 2023, ACT Government Response to Planning Bill Inquiry.

officers that support and feed into decision-making including in situations where a decision may deviate from entity advice. This group is called the Assessment Advisory Panel (AAP). Data provided by EPSDD indicates that the AAP reviewed 43 of 948 applications (or about 4.5%) determined in the 2023 calendar year.

The existence of this body indicates that the planning authority currently recognises the importance and value of expert advice informing decision-making and the benefits of peer review and collaboration. The Review observes that such a body supports a strong governance framework for decision-making.

The relevant Work Instruction (**Appendix 7**) explains that the AAP provides advice to assessing officers in the assessment and determination of significant development applications.<sup>75</sup> The AAP is not a statutory body and does not hold any decision-making powers, so the AAP is only feeding into decision-making processes through the provision of advice. The Work Instruction provides that advice from the AAP may be recorded in assessment documentation and used to inform the decision; however, the advice may not be recorded in a Notice of Decision as a reason for approving or refusing a development application. An assessing officer must seek advice from the AAP under certain circumstances – for example, when 30 or more representations are received on a proposal, for multi-unit developments etc.<sup>76</sup>

The AAP membership consists of core members from the Statutory Planning Division, and a single representative from the referral agency which raised concerns. Other representatives may be invited, including from referral entities. The AAP could provide a potential avenue to address the Committee's desire for increased checks and balances in making decisions (particularly those that may deviate from entity advice). This could be realised without significant cost, inefficiency or duplication, via appointment of a member or members who are external experts, independent to government, to the AAP advisory committee. These members could be invited to contribute to certain categories of decision-making, such as decisions that are likely to not follow entity advice. In a further step, transparency could be achieved if the existing AAP advice was published.

The Planning system currently has access to a pool of independent experts via the DRP. The AAP pool could draw from this Panel, or be comprised in a similar way:

[the Design Review Panel] ...offers the opportunity for peer review of development proposals by independent design professionals with the aim of achieving the best possible outcome for development proposals and public spaces.... Panel members [are] selected from a pool of experts identified for their skills, expertise and record of achievement in one or more fields relevant to planning, design and development... including Architecture, Landscape Architecture, Urban Design and Civil Engineering. Where a specific skill set is required, additional panel members will be called in on an as-needs basis. These may include advice from fields such as heritage, education, sustainability and environmental services, universal design, structural engineering and transport.<sup>77</sup>

---

<sup>75</sup> EPSDD note that the work instructions were used in the previous planning system and are likely to be further revised or supplemented in the foreseeable future to suit the new system.

<sup>76</sup> The full list of triggers appears in the Work Instruction – noting advice above that the Work Instruction is yet to be updated.

<sup>77</sup> EPSDD website, <https://www.planning.act.gov.au/about/national-capital-design-review-panel>

## Recommendation 4

Consideration should be given to using the Assessment Advisory Panel (AAP), to provide advice on the small number of matters that may deviate from entity advice. Relevant independent expert(s) should be invited to participate in the provision of this advice. Transparency would be improved if the advice provided by the AAP on matters which deal with deviating from entity advice was published.

## Committee Recommendation 47: Landscape Architect

The Committee's recommendation 47 was that the ACT Government appoint a Government Landscape Architect to provide advice to the ACT Government and explore the introduction of a landscape policy for the Territory.

The Review understands that landscape architect expertise is currently included in advisory and decision-making roles within the planning system. Specifically, people with these qualifications are currently employed within EPSDD and this expertise is utilised in development application decision processes. Landscape architects are also within the pool of experts available to the DRP and we are advised that landscape architects are routinely part of DRP composition. The Government Architect's role includes landscape matters as part of their scope. There are landscape architects employed by the CRA. The Objects of the Act, the ACT Planning Strategy and other plans and strategies are appropriate mechanisms to ensure that landscape architecture considerations are given weight in planning system processes.

It is also noted that within the application process there are requirements for certain applications to seek advice from an advisory body – the Landscape Review Panel (LRP). As a result, the Review's finding is that the appointment of this role is more of a policy issue, than a governance matter.

## Finding 6

There is existing landscape architect expertise available in the planning system and the appointment of a (titled) Landscape Architect is not a pressing governance matter.

## Part 4: Other Governance Matters

The Review's Terms of Reference required, in addition to the specific matters discussed above, consideration of the effectiveness of the governance framework of the ACT's new planning system and whether it supports the delivery of an efficient and transparent planning system within the ACT context.

The Review notes that the Government's response to the Committee stated:

Governance arrangements associated with the planning system are primarily concerned with the statutory decisions made by the Territory Planning Authority, and the performance and accountability indicators/measurements associated with its decisions. Statutory decisions made within the planning system are currently subject to review in the ACT Civil and Administrative Tribunal (ACAT) and in the ACT Supreme Court. This will continue under the new system, and therefore there is no need to review this arrangement.

The Review takes a broader approach to governance than this interpretation. This section provides a summary of areas in which the Review has heard governance arrangements could be improved.

### Governance to achieve the Objects of the Act

The Committee's Report and recommendations referenced a desire to have confidence the Objects of the Act would be realised within the new planning system. Governance arrangements are an important element in ensuring this.

## **7 Object of Act**

1. The object of this Act is to support and enhance the Territory's liveability and prosperity, protect its natural environment, and promote the wellbeing of residents by creating an effective, efficient, accessible and enabling planning system that—
  - a) is outcomes focused; and
  - b) promotes and facilitates the achievement of ecologically sustainable development; and
  - c) provides a scheme for public participation.
2. As part of achieving the object mentioned in subsection (1), the planning system is intended to—
  - a) be based on policies, processes and practices that are easy to understand; and
  - b) promote certainty of processes and consistent and transparent application of policies while at the same time providing scope for innovation in development proposals; and
  - c) provide a clearly defined hierarchy of planning strategies that inform the content of the territory plan; and
  - d) engage with other laws to support the efficient, appropriate and effective delivery of other related government policy objectives; and
  - e) promote high standards for the built environment through an emphasis on design quality and universal design for the benefit of people with differing needs and capabilities; and
  - f) provide for public participation in relation to the development of planning strategies and policies, and development assessment.
3. The following matters are integral to achieving the object of this Act:
  - a) the ACT's biodiversity values and its landscape setting, including—
    - i. the protection and conservation of biodiversity, habitat, ecological processes and natural systems; and
    - ii. the integration of natural, built, cultural and heritage elements;
  - b) high quality, people focused and design led built outcomes that respond and contribute to the distinctive characteristics of the local area, and sense of place;
  - c) the knowledge, culture and tradition of, and cultural and spiritual connections held by, the traditional custodians of the land;
  - d) planning for population growth and development of the ACT while protecting those aspects that make the ACT an attractive place in which to live;
  - e) a sustainable and climate-resilient environment that is planned, designed and developed to adapt to climate change, reduce greenhouse gas emissions and achieve a net-zero greenhouse gas future using integrated mitigation and adaptation best practices and considers food and water security.

The Review agrees that there is a need for deliberate steps to be taken to support achievement of the Objects of the Act and that it could be beneficial for an advisory body to be part of the governance framework to support the achievement of the broad and ambitious aims of the Act. These aims extend across a number of areas which will require efforts beyond the TPA or Chief Planner.

### Recommendation 5

A strategic advisory body, that includes referral entities and those outside of the TPA that have relevant expertise, should be established to support achieving the Objects of the Planning Act.

## Greater collaboration

With the expanded Objects and shift to outcomes-based decision-making some changes to decision-making processes have been initiated in the TPA, including the use of increased peer review opportunities.<sup>78</sup> However, governance changes have been predominantly limited to the Statutory Planning division within EPSDD, and the Review has seen no evidence of wider governance reforms to support delivery of the comprehensive Objects.

The Review heard two consistent themes from multiple referral agencies:

1. That the broadened Objects of the Act and the move to outcomes-based decision-making warrant a governance group or committee that has oversight for implementation of the new Act and the realisation of its reform ambition. This strategic group should include policy, decision-makers, and referral entities and be charged with advising the TPA on an implementation plan for delivering the objects.<sup>79</sup>
2. Governance would be improved if there was earlier collective engagement with referral entities in the assessment of the applications. This would support the development of new decision-making considerations and be beneficial to uplifting expertise across the planning system.

The SLA submitted to the Review that:

There is an opportunity to improve the current planning and governance arrangements to enhance the timeliness and integration of urban development design and infrastructure projects.

Several stakeholders also identified a desire for earlier engagement both in policy setting and in individual application processes. The ability to bring expertise such as likely down-stream compliance or complaint issues; technical heritage expertise, and considered environmental issues was seen to be an opportunity to strengthen the governance of outcomes-based decision-making.

For example, the Review heard that while matters like local heritage, character and community values are included in the new Planning Act, the Council and Heritage Act are not able to give effect to these

---

<sup>78</sup> For example, the new assessment template used for development assessments asks the person considering the DA to consider whether referral to the AAP or LRP will be required. This question is asked at multiple stages of the assessment, as the “evidence” from entity advice or community comments may change the answer during the six stages of the DA assessment process. While the internal template is not public, the six stage assessment process is described in the DA assessment process fact sheet, [https://www.planning.act.gov.au/\\_\\_data/assets/pdf\\_file/0012/2323011/da-assessment-process.pdf](https://www.planning.act.gov.au/__data/assets/pdf_file/0012/2323011/da-assessment-process.pdf).

<sup>79</sup> For example, to address the Heritage Council’s concern that not all of the objects in relation to heritage are within the Council’s mandate or capacity.

provisions under current settings, and there is a lack of alignment between the heritage ambitions of the Planning Act and the remit of the Heritage Council. Issues such as these need a forum for resolution and progression.

Access Canberra advocates for a requirement for consultation with appropriate entities in relation to the preparation of design guides and technical specifications.

In a planning system where environment and sustainability are some of several relevant factors, reference to guidance provided by other government entities (including the EPA, TCCS and others) can give sufficient direction to both proponents and assessing officers to have regard to that material at the design and assessment stage. In practice, consideration of expert guidance on such matters will be an important part of achieving desired development outcomes and ensuring that developments meet environmental standards and proactively mitigate pollution.

If EPA advice or guidance regarding noise pollution and noise mitigation strategies is not followed at the policy development, design or assessment stages, it may result in increased complaints to the EPA and lead to a reduced confidence in the Authority as a decision-maker and in the EPA as an effective regulator. This can also lead to increased costs to businesses where retrofitting or new approvals are required to prevent noise pollution.<sup>80</sup>

The process that is understood to currently be in place for determination of applications would benefit from greater collaboration across entities. Currently at stage 2 of the assessment process the development application is sent out to each relevant referral entity. They provide their advice back in isolation of other referral entity advice. A decision is then taken in the centre (by the TPA) to follow entity advice or deviate from it. If a decision is taken to not follow referral advice, entities were sometimes unclear as to the deeper reasoning for this if a decision was taken in absence of further engagement with them.<sup>81</sup>

A collective approach to *advising* on decision-making for applications was recommended by several referral agencies. It was argued that this would increase the technical expertise of assessors, improve transparency in decision-making, and allow for a more genuine multi-disciplinary consideration of applications.

This model replicates the current Stage 2 Assessment process, but instead of referrals being sent out to agencies to comment in isolation of each other, the process would enable advisors and decision-makers to come together to collectively consider entity advice for certain DAs, as is already permitted by the AAP in the existing work instruction.

Earlier, integrated engagement was seen by referral agencies as an opportunity to strengthen governance through improving decision-making, sharing expertise and increasing transparency in how outcomes-based decisions will be determined. This was also offered as a solution to promote early resolution of potential conflicting advice between entities, such as heritage and the environment, and ensure greater design outcomes. It was also identified as a potential solution to conditional approvals being granted subject to resolution of matters with referral entities, which may be unlikely to be satisfactorily resolved.<sup>82</sup>

---

<sup>80</sup> Access Canberra advice, dated January 2024

<sup>81</sup> Similar to the Committees report, the Review heard that the published reasons for deferring entity advice was often lacking depth leaving referral agencies sometimes unclear why their advice was not followed.

<sup>82</sup> The Review heard of examples whereby conditional approval was granted but would never be given final approval as referral entity considered the matter was unresolvable.

Most other jurisdictions adopt this approach for at least some planning decisions (see Appendix 3) and officers in referral entities who have worked under different models indicated they believed a similar panel or committee structure would provide a governance solution that increased the robustness of outcomes-based decision making.

### Recommendation 6

The TPA governance framework should seek to encourage more opportunities for earlier collaboration across referral entities and other relevant bodies that interact with the Development Application (DA) processes and in policy settings including developing or reviewing guidelines.

## Ecologically Sustainable Objects

There were specific concerns raised by stakeholders in the Committee Inquiry that went to the issue of environmental matters not being given appropriate consideration in decision-making or there being appropriate levels of accountability for achieving ecologically sustainable development, environmental protection and climate change considerations.

The Review identified that this increased environmental focus has been captured in the documents and instruments that flow from the Act, such as the Territory Plan, district strategies, guidelines, and other documents. It has been less obvious in other governance strategies and approaches.

It is not clear to the Review how this new focus and priority of the system will be reflected in accountability mechanisms and there is an absence of governance mechanisms and a reporting framework that would provide confidence in these objects being able to be measured or met.

### Finding 7

It is not clear where accountability sits for the oversight and monitoring of ecologically sustainable development and how the ambition of the Planning Act will be achieved in this area.

## Trust and Transparency

Transparency in decision-making is a cornerstone of good governance (particularly in the public sector), as it fosters trust and accountability. Transparent decisions based on accessible information and opportunities for public input are more likely to be perceived by the public as fair and inclusive. The move towards an outcomes-based planning system provides further cause for transparency. An understanding of who makes decisions, and how and why they are made, will be critical for confidence in the new system.

As ACT Health noted in its submission to the Review:

A move away from a rule-based system may introduce more subjectivity in planning decisions. While this may not be an issue of governance it may create confusion and questions around transparency and consistency of decision-making.<sup>83</sup>

---

<sup>83</sup> December 2023



#### The CRA submitted:

Inconsistent interpretation of an outcomes focused system, absent of detailed mandatory controls, may lead to a perceived lack of transparency. To improve transparency and consistency in decision-making, development proposals should be reviewed not just by planners but other allied professionals (e.g. architects, landscape architects, and urban designers) to ensure decision making is informed by expertise from relevant fields. The decision-making process should be clear and transparent to the public who are the ultimate beneficiaries of the process.<sup>84</sup>

Currently the TPA publishes decisions, as well as guidelines, flow charts and advice. However, there is not a governance framework for the Authority that clearly defines who (which roles) make decisions, and their relationship to other key contributors. Some of this information can be found in the instruments such as the Territory Plan and other guidelines, strategies and other documents. However, there is not a clear presentation to the public of who makes decisions and how these decisions are made.

#### The CRA further submitted:

To realise the full benefits of the new Plan consideration should be given to providing targeted education to the community, to support public understanding and highlight how good design can be facilitated as part of a well governed and transparent process. To support a fully transparent process the Authority would support EPSDD publicly mapping the process they undertake to determine decisions.

#### The Planning Institute of Australia states:

Trust, reinforced by strong community and stakeholder participation, lends authority to planning decisions. It allows the planning process to be accepted as a valid means for making difficult trade-offs and determining land use decisions in the public interest. Stakeholders and the public are reacting to the impacts of rapid urban growth and change on their property, neighbourhood or lifestyle in increasingly vocal fashion. Not surprisingly, the impact of planning decisions are visible in all media... For planning to be perceived as a valid way of making land use decisions in the public interest, it must have the trust of the community.<sup>85</sup>

In their submission to the ACT Legislative Assembly in November 2022 the PIA further said specifically of the ACT system:

The planning system review highlights that trust in the current planning system needs to be improved. Transparency and openness in decision-making is critical – information and knowledge on which decisions are made and what factors are taken into account needs to be provided and fulsome explanations provided about why decisions are made and how issues are addressed.<sup>86</sup>

---

<sup>84</sup> January 2024

<sup>85</sup> Planning Institute of Australia, 2023, Maintaining 'Trust' in Planning <https://www.planning.org.au/documents/item/10486>.

<sup>86</sup> PIA ACT Submission to ACT Legislative Assembly Planning Committee, 13/11/22  
<https://www.planning.org.au/documents/item/12146>

The theme of transparency in decision-making was raised in a number of submissions to the Committee, as well as stakeholders during the Review. Transparency has been a recurring issue raised over a number of years.<sup>87</sup> For example:

A number of stakeholders expressed concern about the lack of transparency in relation to ACTPLA decisions with regard to the Conservator's advice. Although ACTPLA meets its statutory obligations under the Planning and Development Act with regard to planning decisions taken, PwC was advised that there was limited feedback provided by ACTPLA as to how the Conservator's advice was considered with regard to planning issues and the reasons why a decision which is inconsistent with the Conservator's advice was made. Greater transparency, especially where ACTPLA makes a decision which is inconsistent with the advice of the Conservator by providing a more comprehensive statement of reasons, would facilitate greater public confidence in the integrity of the planning process.<sup>88</sup>

A concern held by many witnesses was the lack of access to, and disclosure of, information and decisions under the current system, and a concern that this would continue under the new Bill.<sup>89</sup>

There is a need for greater transparency in the decision-making of the Territory Planning Authority, particularly in relation to heritage places, so that Canberrans can have confidence in the planning system's ability to consider heritage amongst competing factors.<sup>90</sup>

The Commissioner's requests for clarification on this matter have not resulted in the provision of any further information. Consequently, the Commissioner has concerns about the transparency of this decision-making process given that there is evidence of pressure from [a proponent] regarding the decision.<sup>91</sup>

When the Review assessed what information was publicly available regarding decision-making, it observed that there remain opportunities for improvement.

There are multiple inputs to facilitate a new outcomes-based model – strategies, guidelines, technical specifications, plans. However, there is no transparency on how these interface and collectively translate to inform decision-making, and specifically not just what is considered, but how it is weighted. For example, the TPA may deviate from entity advice if the decision-maker considers (amongst other matters) that acting contrary to the advice will significantly improve the planning outcome to be achieved. A transparent explanation of how this assessment might be made would be a good governance initiative.

The reasons a decision-maker may approve a Development Application contrary to entity advice are set out under s.190 of the Planning Act, namely:

- The decision-maker must consider the relevant desired planning outcomes outlined in the Territory Plan.

---

<sup>87</sup> Criticisms about transparency have also been levelled at the Heritage Council, another referral entity, that is supported by EPSDD – refer to the Inquiry into ACT Heritage Arrangements, Standing Committee on Environment, Climate Change and Biodiversity, October 2023.

<sup>88</sup> PwC, June 2011, Review of the Roles and Functions of the ACT Conservator of Flora and Fauna

[https://www.environment.act.gov.au/\\_\\_data/assets/pdf\\_file/0008/575207/PWC\\_report\\_on\\_Conservator\\_roles.pdf](https://www.environment.act.gov.au/__data/assets/pdf_file/0008/575207/PWC_report_on_Conservator_roles.pdf)

<sup>89</sup> PTCS, 2022, Planning Bill Inquiry Report, p 41

<sup>90</sup> ECCB Inquiry into ACT Heritage Arrangements, Report 9, October 2023 p 30.

<sup>91</sup> OCSE Final Complaint Report Complaint 002-2022 – provided to Review.

- For a proposal requiring an EIS, the decision-maker must consider any reasonable alternative development options.
- The proposal or project does not involve a protected matter.
- The decision-maker must be satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved.

An example of the type of issue that might be explained appears in a report provided by the Commissioner for Sustainability and the Environment. The scenario may not be the same under the new legislation, but it provides a useful example of the type of issue that could be explained in a decision:

In line with the Commissioner’s mission to act as an independent voice for the environment and sustainability in the ACT, this report questions whether the ACT planning system adequately considers environmental and sustainability matters which are not explicitly covered by the statutory process. The Commissioner’s understanding is that under current arrangements, heritage values included on the heritage register are protected due to their inclusion in the Territory Plan, while broad sustainability values are not. This means that legally there is no basis for ‘weighing up’ whether a measure to protect heritage will have adverse environmental impacts, because there is no statutory trigger for such sustainability values to be considered.<sup>92</sup>

This type of explanation would be helpful for people to understand the basis for decision-making (and in turn potentially lead to improvements in policy). The Commissioner further articulated a policy gap that might be understood by decision-makers, but not by the public:

The ACT Government has clear procedures for the provision of entity advice to development assessments, which were followed... The purpose of these procedures is to ensure that any potential impact on existing infrastructure, utilities, registered heritage, or environment matters is identified and, as far as possible, mitigated. However, the system is effectively blind to matters which are not explicitly dealt with in the legislation. There is no opportunity to weigh up how advice from one entity may impact on a different thematic area — in this case, the impact of heritage advice on sustainability outcomes — because within the planning system sustainability is effectively a non-issue when it relates to an area which also has registered heritage values that are recognised in the Territory Plan.<sup>93</sup>

Based on the Inquiry’s submissions it appears unclear to the public who provides advice, when, and how this is considered in decision-making. Further, stakeholders who would reasonably be expected to have a clear, accurate understanding of such matters expressed confusion to the Review about how advice is considered, and by whom.

Specifically, with the shift to outcomes-focused decisions, the mechanisms that have been put in place around peer review and advisory committees appear not to have been transparently communicated publicly, and awareness of them may increase trust in the processes established.

Icon Water submitted:

---

<sup>92</sup> Complaint report provided to the Review by the Commissioner for Sustainability and the Environment, dated 2022.

<sup>93</sup> Complaint report from Commissioner, as above.

As stewards for the planning process, it would be preferable that the ACT Planning system reflect and specifically highlight the requirements of independent referral entities critical for municipal functionality. From an Icon Water perspective, applicants should be encouraged by EPSDD to engage with all utilities at pre-Development Application (DA) stage to increase certainty and efficiency in the planning process and reduce any potential compromise of infrastructure serviceability.<sup>94</sup>

The website provides data about volume of applications / decision-making.<sup>95</sup> As noted earlier, the data and statistics collected and published do not address when referral entity advice has not been followed. This means that decision-making trends are not visible.<sup>96</sup> Equally, compliance and regulatory matters are not published as part of planning data, and so compliance with development application decisions / approvals is also not visible.

Access Canberra supports the development of robust approaches to collecting and evaluating data to determine how the new system is meeting its objectives, including delivering better buildings that respond to the challenges of a modern, more compact city. The continued monitoring of development outcomes under the new system will be important to determine whether changes are required.<sup>97</sup>

EPSDD provided the Review with a copy of the Assessment template used to support decision-making in the new Planning system.

The template steps the development application decision-makers<sup>98</sup> through the new Planning Act, pointing them to consider the objects of the Planning Act, relevant design guides, entity advice, public comments and other material. The template does not, however, define or provide guidance on how the final decision-maker should go about determining the “good planning outcome” that would be achieved, should they decide to make a decision against entity advice.

This concern is reflected in community feedback, including for example comments by the Belconnen Community Council Chair in the December 2023 hearings for the Inquiry into the Territory Plan:

I think that is really a key part of some of the angst that is in the community - if you do not know how a system works, if you do not know what our options are, what things will actually come out to be throughout the process. If you live somewhere, you want it to be better and you are going to be very concerned.

... a lot more work has to be done in communicating with the community. Make it a two-way street so that what is actually being said gets implemented. ...

We really need to have the EPSDD know how the system actually works and make sure they inform the community on how it works, so we can all work together and try and keep Canberra a great place.

---

<sup>94</sup> February 2024

<sup>95</sup> <https://www.planning.act.gov.au/applications-and-assessments/development-applications/development-statistics/development-applications-da-statistics-2023-24>

<sup>96</sup> The Review sought and was provided information from EPSDD about departures from referral entity advice.

<sup>97</sup> Access Canberra submission to Review.

<sup>98</sup> Multiple assessing officers assess each DA via the six-step process described earlier.

## Recommendation 7

The TPA should prioritise transparency in its decision-making, including proactive release of data, accessible graphics and other information. This should include:

- a) a governance framework that describes the different roles within the planning system and their relationship to each other; and the purpose and membership of governance committees
- b) a dedicated section on the website relating to the TPA which clearly explains who is responsible for what, by (de-identified) positions
- c) open disclosure of decision-making processes and which roles/expertise have inputs that support the new outcomes-based decision-making model. This should provide a clear and transparent understanding of accountability for activity and outcomes
- d) open disclosure of decision-making criteria that will be applied if a decision is to deviate from entity advice
- e) publication of the Design Review Panel's advice on projects and reasons for application approval if the proponent has not followed this advice
- f) aggregate data relating to entity advice; how often entity advice is deviated from; and which entity's advice was not followed should be reported on the Development Application statistics page
- g) separate annual reporting that provides a permanent record of data and other matters, including the TPA appearing in Column 2 (like the Conservator and Heritage Council) in any updated Annual Report Direction.

## Role clarity and independence: TPA v EPSDD

The Territory Planning Authority (TPA) – in its description of itself and in the Government's response to the Committee Inquiry – often uses the term independent. This reflects that the Authority's decisions on applications are (generally) independent of the Minister (except where the Planning Act provides for the Minister to be the decision-maker).

However, the assertion of independence is often not matched by the external manifestations of the Chief Planner or TPA, where it is largely absorbed by EPSDD (or vice versa). The Review does not question that the TPA functions are discharged independently without ministerial interference, rather the point being made is that it is not clear to external parties that there is any material difference between EPSDD and the TPA.

There is little information available to a public audience that demonstrates any functional difference between the TPA/Chief Planner and the Planning area of EPSDD.

The Planning and Environment Divisions of EPSDD have separate web pages, but this does not serve to make things clearer. For example, the “About Us” section of the Planning webpage and many of the new fact sheets refer to EPSDD and the TPA interchangeably.<sup>99</sup> There is no organisational chart that shows how responsibilities for the TPA/Chief Planner are discharged – it is an amorphous body indistinguishable from EPSDD. There is no recognition of any positions for the TPA other than the Chief Planner (although, as is appropriate, decisions are published in the name of individual delegates). The TPA has no identity or livery. It is perhaps not helpful to those who may wish to understand how planning decisions are made that the TPA is defined to be a single person, the Chief Planner.

In the 2022-23 Annual Report for EPSDD, the reports for the Conservator and the Heritage Council appear as sections within the report. There is no separate section for the TPA, which makes it difficult from an external perspective to understand the difference (or independence) between the Directorate and the TPA.<sup>100</sup> The Review understands that this is due to 2022 Annual Report Directions which require that a planning report be subsumed into the EPSDD annual report.<sup>101</sup> The Review recommends that consideration is given to the TPA appearing in Column 2 (like the Conservator and Heritage Council) in any updated Annual Report Direction.

The Review also notes that the Planning Regulations prescribe referral entities if an application for a development proposal requires an EIS. The directors-general of the administrative units responsible for health policy and city services are referral entities. The director-general of the administrative unit responsible for environment is not prescribed as a referral entity.<sup>102</sup>

None of these things alone are of course conclusive of any point but are illustrative of factors that do not assist external audiences in understanding the delineations that the Director-General/Chief Planner has been careful to try to create. The examples do not help to counter the perception that the Chief Planner’s role is indistinguishable from the Director-General, and they act to counter the transparency objective articulated by the directorate.

## Recommendation 8

Consideration should be given to the Director-General of EPSDD being a prescribed referral entity for an Environmental Impact Statement (EIS) in the Planning Regulations, given their responsibilities for the environment under current administrative arrangements.

---

<sup>99</sup> The “About” section of the [www.planning.act.gov.au](http://www.planning.act.gov.au), at 9 February 2024.

<sup>100</sup> In the EPSDD Annual Report 2022-23, Output 1 is Statutory Planning which states that “the Directorate performs the functions of the planning and land authority ...” and provides data about the number of applications and determinations made, and the numbers of enquiries responded to.

<sup>101</sup> NI2022-308-Annual-Reports-Government-Agencies-Directions-2022.pdf ([act.gov.au](http://act.gov.au))

<sup>102</sup> This does not prevent the Director-General from being consulted by the TPA by virtue of regulation 13(1)(b), but the omission is somewhat peculiar given the subject matter. Note that the Conservator of Flora and Fauna and the EPA are also referral entities.

# Appendix 1: Terms of Reference

## ACT Planning System Governance Review: Terms of Reference

### Purpose

The ACT has a new planning system, which will commence on 27 November 2023. The system is comprised of three key reforms, the [Planning Act 2023](#) (the Act), the introduction of district strategies (strategic planning), and the new Territory Plan (statutory planning).

The new Act is the legal foundation for the new planning system. The new (interim) Territory Plan outlines what development can take place, where and how. There are nine spatially based district strategies that: reflect the special character of corresponding districts; identify areas for change to accommodate future projected growth and how that growth might respond to community and Government expectations; and outline requirements for implementation of the district strategies, including further expert technical work and analysis.

The purpose of this Review is to examine the governance framework of the new ACT planning system. The Review will examine the key statutory positions and decision-making roles within the planning system to consider if it reflects good governance and is fit for purpose.

The Standing Committee on Planning, Transport and City Services (the Committee) Inquiry into the Planning Bill 2022 recommended that the ACT Government review governance and administrative arrangements. A motion was passed by the Legislative Assembly (the Assembly) on 31 May 2023 that, consistent with the recommendations of the Committee, the ACT Government complete a governance review on the new ACT planning system within 12 months of passage of the Planning Bill 2022, and that the review be tabled in the Assembly. The motion states that the review is to be conducted by an independent expert who does not report to the ACT's Environment, Planning and Sustainable Development Directorate (EPSDD) and that the terms of reference are to include issues raised in the Committee Report, specifically recommendations 11, 12, 16 and 47.

### Scope of the Review

1. The Review will consider the effectiveness of the governance framework of the ACT's new planning system and whether it supports the delivery of an efficient and transparent planning system within the ACT context.
2. The Review will consider the principles and practices of good public sector governance in relation to planning and specifically the governance arrangements of persons, positions and decision-making functions that have a direct, advisory, regulatory or statutory role, specifically:
  - a. The ACT's Chief Planner;
  - b. The National Capital Design Review Panel;
  - c. The ACT Government Architect; and
  - d. The Conservator of Flora and Fauna.

The Review may also consider the role of any additional offices which have a governance or integrity role relevant to the planning system.

This will include an assessment of the ability of planning system officeholders to perform the intended functions of their roles in accordance with statutory requirements, with respect to:

- i. the degree of independence and separation afforded to each role;
  - ii. the ability to provide and receive advice; and
  - iii. accountability and responsibility in the decision-making process.
3. The Review will consider the Standing Committee on Planning, Transport and City Services Report 12 - Inquiry into Planning Bill 2022 recommendations that relate to the governance and decision-making framework, including recommendations 11, 12, 16 and 47.
  4. In considering the above terms, the review shall give due consideration to the fact the ACT is a small jurisdiction which may necessitate particular governance arrangements for reasons of both capacity and efficiency.

## **Deliverables**

The Review will produce an independent report, including recommendations, to the ACT Chief Minister on the findings relating to the governance framework of the new planning system.

## **Stakeholder Engagement**

The review will engage with those positions that have an advisory, regulatory or statutory role in planning decisions in the ACT, and will specifically include:

- The ACT's Chief Planner;
- The National Capital Design Panel;
- The ACT Government Architect;
- The Conservator of Flora and Fauna; and
- Any other statutory roles that interact with the planning system that the Reviewers identify should be in scope, including those stakeholders listed at Appendix 1.

The Review will also engage with any other stakeholders the Reviewer determines would be of assistance in assessing the effectiveness of the new governance framework.

The Review may take account of relevant public feedback provided to the ACT Planning System Review and Reform project and the Standing Committee Inquiry into the Planning Bill. Public consultation and a call for public submissions are out of scope for the Review.

## **Timeframe**

The report is required to be delivered to the ACT Chief Minister no later than 25 March 2024.



## Appendix 1: Key Stakeholders

- The ACT's Chief Planner
- Conservator of Flora and Fauna
- ACT Government Architect
- National Capital Design Review Panel
- Environment Protection Authority
- City Renewal Authority
- Heritage Council
- Emergency Services Commissioner
- Director General Health
- Director General TCCS
- ICON Water
- The Chief Minister
- The Minister for Planning and Land Management
- The Commissioner for Sustainability and the Environment
- Access Canberra, including the Construction Occupations Registrar
- Office of Industrial Relations and Workplace Safety
- Members of the Legislative Assembly on the Standing Committee on Planning, Transport and City Services, which inquired into the Planning Bill 2022.

## Appendix 2: Other Sources

Hawke, 2011, ACTPS Review Final Report: Governing the City State,  
[http://www.cmd.act.gov.au/\\_data/assets/pdf\\_file/0011/224975/Governing\\_the\\_City\\_State.pdf](http://www.cmd.act.gov.au/_data/assets/pdf_file/0011/224975/Governing_the_City_State.pdf)

IFAC/CIPFA, 2014, *International Framework: Good Governance in the Public Sector*

OECD, 2014, Best Practice Principles for Regulatory Policy

UN Human Rights Commission, *About Good Governance*, <https://www.ohchr.org/en/good-governance/about-good-governance>

Uhrig, 2003, Review of the corporate governance of statutory authorities and office holders, available at <https://nla.gov.au/nla.obj-922761191/view?partId=nla.obj-924283006>,

Victorian Public Service Commission, 2022 “Legal Form and Governance arrangements for Public Entities”, <https://vpsc.vic.gov.au/governance/public-entity-types-features-and-functions/employment-arrangements-for-public-entities/legal-form-and-governance-arrangements-for-public-entities/#heading7>

VPSC, 2022, <https://vpsc.vic.gov.au/ethics-behaviours-culture/inform-and-advise-ministers/secretaries-what-to-consider-when-advising-ministers/>

## Appendix 3: Planning governance in other jurisdictions

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
<b>Statutory Chief Planner Role</b>	✓ Chief Planner	x Chief Executive (some functions only)	x Chair of Development Consent Authority	x Chief Executive (some functions only)	x	x	x Chief Executive (some functions only)	x
<b>Dual role holder?</b>	✓	✓ Limited - CE has some functions	x	✓ Limited - CE has some functions	x	x	✓ Limited – CE has some functions	x
<b>Responsibilities outside of planning system?</b>	✓	✓	x	✓	x	x	✓	x
<b>Planning Panel</b>	x	Independent Planning Commission (Panel)	Development Consent Authority (Panel)  NT Planning Commission (advisory only)	State Assessment Referral Agency (Panel)	State Planning Commission (Panel)	Tasmanian Planning Commission (Panel)	Victoria Planning Authority (Panels + individual decision makers)	Western Australian Planning Commission (Panel)
<b>Planning decision making bodies</b>	Territory Planning Authority  Chief Planner or delegate  Minister for Planning or delegate	Minister for Planning or delegate  Independent Planning Commission  Independent Local and Regional Planning Panels  Local Government	Development Consent Authority (Board) for most DAs  Minister for Infrastructure, Planning and Logistics (or delegate)  NT Planning Commission (advisory)	Local governments  State Assessment Referral Agency (SARA)	State Planning Commission  Councils no longer have authority for assessment (except minor building approvals in rural areas).	The Commission reviews and approves planning schemes, instruments, and provides advice on planning matters.  Councils are the consent authority for the majority of developments	Minister can appoint planning panels  The Minister (or delegate)  Councils  The Victoria Planning Authority (strategic and infrastructure planning)	Western Australian Planning Commission  Local Councils  Development Assessment Panel/s
<b>Environment and planning in the same administrative structure?</b>	✓	x	x	x	x	x	x	✓
<b>Separate annual report by planning body/s?</b>	x	✓	✓	x KPIs are reported for SARA	✓	✓	✓ VPA is a stat authority	✓

# Appendix 4: Stakeholders invited to contribute

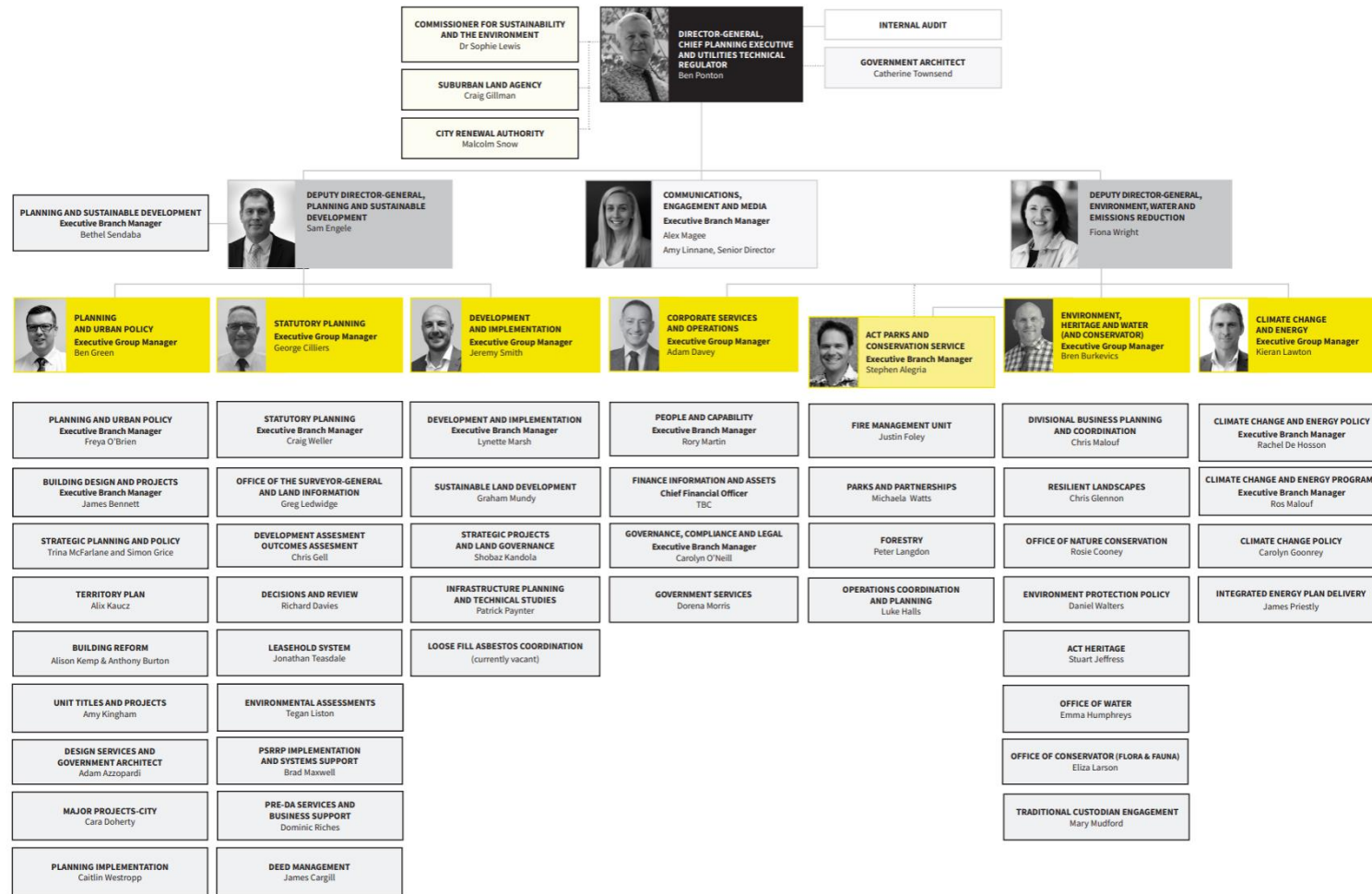
Access Canberra	Evo Energy
ACT Auditor-General	Head of Service, ACT Government
ACT Government Architect & Co-Chair, National Capital Design Review Panel	ICON Water
ACT Health Directorate	Justice and Community Safety Directorate
ACT Heritage Council	Minister for Planning
ACT Integrity Commissioner	Minister for Planning and Land Management
ACT Ombudsman	Minister for the Environment and Minister for Heritage
Chief Minister	National Capital Authority Chief Planner (As Co-Chair, Design Review Panel)
Chief Planner and Director-General, EPSDD	Office of Industrial Relations and Workplace Safety
City Renewal Authority	Public Sector Standards Commissioner
Commissioner for Sustainability and the Environment	Standing Committee on Planning, Transport, and City Services - ACT Legislative Assembly – Chair
Conservator of Flora and Fauna and Executive Group Manager, Environment, Heritage and Water	Standing Committee on Planning, Transport, and City Services - ACT Legislative Assembly – Deputy Chair
Deputy Director-General, Planning and Sustainable Development	Standing Committee on Planning, Transport, and City Services - ACT Legislative Assembly – Member
Emergency Services Commissioner	Suburban Land Agency
Environment Protection Authority	Transport Canberra and City Services

# Appendix 5: Related activity

Title	Description	Timing
Nature Conservation Act review	Section 371 of the Nature Conservation Act 2014 (NCA Act) requires that the Minister review the operation of the Nature Conservation Act and present a report to the Assembly as soon as practicable after the end of ten years of operation, i.e. in 2024. This Act establishes the role of the Conservator of Flora and Fauna.	2024
Planning system reform project – legislative review	A legislative review of the planning system review and reform project after its first three years of implementation.	The Assembly requires this review be completed and tabled by June 2026.
Tree Protection/Urban Forest changes	The ACT’s tree protection approach changed from 1 January 2024 with the repeal of the Tree Protection Act 2004 and its replacement with the Urban Forest Act 2023. This includes reference to the role of the Conservator of Flora and Fauna to provide planning advice relating to tree impacts.	The Urban Forest Act came into force on 1 January 2024.
Heritage-related reform	<p>An Assembly Inquiry into the ACT’s heritage arrangements reported in October 2023<sup>16</sup> on the recent changes in the heritage space in the ACT, including the dissolution of the previous Heritage Council and appointment of an interim Council, following a review by a third party that had found high workloads and a breakdown of relationships between the EPSDD heritage unit and the former Council. The Committee report made several recommendations including:</p> <ul style="list-style-type: none"> <li>(3) ensuring reforms to the heritage framework take account of the recent planning reforms</li> <li>(5) make public/ ensure transparency in relation to planning decisions with a heritage consideration</li> <li>(9) considering removal of the Chief Planner and Conservator of Flora and Fauna as ex officio members of the Council.</li> </ul>	The heritage reform program was announced in late 2022. EPSDD undertook community consultation in 2023 to inform a heritage action plan, including “future heritage laws, frameworks, systems and arrangements.”
Inquiry into the Territory Plan and associated documents	The Standing Committee on Planning, Transport and City Services is inquiring into the Territory Plan and supporting documents including the policy goals for the new system and whether the new system can meet these goals; and b. How Variation 369 and the ACT Government’s commitments to Living Infrastructure targets are embedded in the Territory Plan.	The Inquiry is due to report in March 2024.

# Appendix 6: EPSDD organisational chart

ENVIRONMENT, PLANNING AND SUSTAINABLE DEVELOPMENT DIRECTORATE ORGANISATIONAL CHART



AS AT 5 FEBRUARY 2024

# Appendix 7: Work Instruction: AAP



## Work Instruction Seeking advice from the Assessment Advisory Panel (AAP)

---

### 1 Purpose

The purpose of this Work Instruction (WI) is to provide guidance to an assessing officer on seeking advice from the Assessment Advisory Panel (AAP).

### 2 About the AAP

The AAP provides advice to assessing officers in the assessment and determination of significant development applications. The AAP is not a statutory body and does not hold any decision-making powers under the *Planning and Development Act 2007*. Any application or assessment referred to AAP may only seek advice.

The advice from the AAP may be recorded in assessment documentation and used to inform; however, the advice should not be recorded in a Notice of Decision as a reason for approving or refusing a development application.

The AAP considers proposals during the combined AAP and Landscape Review Panel (LRP) meetings held weekly, on an as-needs basis. The AAP can also consider some proposals out-of-session. More information about out-of-session AAP advice is provided in section 7 below.

### 3 Triggers for seeking advice from the AAP

If an application meets any of the below triggers, the assessing officer must seek advice from the AAP, unless excepted by the Executive Group Manager, Planning Delivery or the Executive Branch Manager, Development Assessment:

- Impact track development applications (DA)
- All estate development plan DAs
- When 30 or more representations are received on a proposal
- Where the gross floor area for a proposed development exceeds 10,000m<sup>2</sup>
- Where the height of a proposed building is above 25m
- For multi-unit developments, where a proposed building is 3 or more storeys tall and has 50 or more dwellings
- When a development has a shortfall of parking of 25% or more of the spaces required by the Parking and Vehicular Access General Code (for multi-unit developments, this criterion only applies when there are 10 or more dwellings)
- When an amendment application seeks to change the finishes or materials of significant approved developments or have a potential adverse effect on the development outcome.
- When referred to by the LRP or an out-of-session AAP.

### 4 AAP membership

The AAP will consist of the following core members, noting that any member may send a representative on their behalf:

- Executive Branch Manager, Development Assessment
- Senior Director/s, Planning Operations
- Director/s, Merit Assessment
- A single representative from a referral agency who raised concerns.

The following members are optional and will only be invited where applicable:

- Senior Director, DA Leasing and ACAT Coordination
- Senior Director, Impact Assessment
- A single representative from other referral agencies.

A quorum for formal AAP meetings is four members.

Any of the members listed above may send another representative on their behalf.

## **5 Preparing for AAP**

When a matter meets the above triggers, the assessing officer is responsible for preparing the briefing on the application for the AAP. This includes:

- Creating an 'AAP' sub-folder in the 'Agency Comments' folder of the DA Objective file.
- Preparing the AAP brief (named 'AAP brief - DA number - Block/Section Suburb'). The brief should only contain summarised and relevant information (also refer to 'AAP brief - template' for preparation instructions).
- Collating all relevant plans, documentation and entity advice (aliased into the AAP subfolder).

Once prepared, the assessing officer must send a request to book the application, along with the Objective link to the AAP sub-folder, to the AAP and LRP Coordinator ([MPRGandLRP@act.gov.au](mailto:MPRGandLRP@act.gov.au)).

The Coordinator will book a time for the application to be considered by the panel and circulate meeting agendas. Meeting minutes are taken by the Coordinator before being sent to the chair of the meeting for clearance.

## **6 Assessing Officer AAP Responsibilities**

The assessing officer must attend an AAP meeting, unless otherwise agreed with the team leader. The assessing officer should be prepared to provide a short verbal summary of the proposal and landscaping matters as well as answer questions or provide additional information if requested.

Assessing officers are requested to focus discussion on the matters to be dealt with and not summarise the entire proposal. Assessing officers should assume all AAP members have read the information provided in the AAP Brief and have an understanding of the proposal prior to the meeting.

Should an item meet one of the triggers outlined in section 3 above but is excepted from being presented to the AAP by the EGM or EBM, the assessing officer is to record this in the DA assessment template, as appropriate.

## **7 Out-of-Session AAP Advice**

An out-of-session AAP asks for members to provide their advice over email.

Applications that meet the triggers for referral, as outlined in section 3, but have few or minor assessment or entity issues for discussion may be considered out-of-session. If you are unsure whether your item should be considered out-of-session, please discuss with the team leader.

Preparing for an out-of-session AAP follows the process outlined in section 5 above.

When prepared, the Coordinator sends the AAP brief and Objective file to members requesting written advice on the application. Once received, the Coordinator saves all responses into the 'AAP' sub-folder in the 'Agency Comments' folder and, when finalised, forward the Objective link to the relevant assessing officer and team leader.



# Appendix 8: Integrity and Complaints:

## EPSDD

The Statutory Planning Division Integrity Plan 2023-25 outlines the Division's commitment to integrity, promotes transparent and open business processes and raises awareness of response measures and policies to be adhered to in the face of integrity issues, such as fraud, corruption and corrupt conduct.

Statutory Planning's Integrity Plan aligns with EPSDD's broader Integrity Policy suite which includes the Portfolio Fraud and Corruption Prevention Plan, EPSDD Conflict of Interest Policy and Procedures and the Purchase of Land by Portfolio Staff, Contractors and Public Sector Members Policy. There are rules in place regarding how meetings will be conducted, for example, with proponents; and processes in place to ensure that there are inputs from staff into decision-making, including the six-stage assessment process implemented by EPSDD.<sup>103</sup>

EPSDD also provided information about the complaints policy developed by the Statutory Planning Division, where most DAs are considered:

The Directorate continues to receive, consider, and respond to stakeholder feedback in line with its Complaints Policy (the Policy).<sup>104</sup> The Policy, which was introduced in late 2020, aims to make sure that the independent planning and land authority (the Authority) has an open and transparent approach to dealing with complaints or feedback. It also provides an avenue for complaints to be made in relation to conduct, processes, or actions of Authority staff when performing both their statutory and non-statutory functions. Throughout the reporting year a total of three formal complaints and other potential complaints were investigated in line with the Policy. The investigations led to some internal processes being reviewed and improved, including outgoing communication throughout the assessment process. This feedback provides valuable information about the Authority's business operations and service delivery. It also provides a sound evidence base to pursue internal business improvement initiatives. The Authority will continue to impartially review its internal processes in line with complaints received.

EPSDD advised:

Internal audits of planning decisions are periodically undertaken to evaluate the efficiency of decisions in terms of consistency, process and timeframes. These reviews are either periodic or in response if a process inefficiency has been identified. Typically, these reviews will review the timeframe and process associated with a particular decision or a decision type, and suggest process improvements, e.g., changes to assessment, changes to decision-making templates. These reviews can also identify improvements with respect to decisions and lessons learned from ACAT reviews, e.g., suggest changes to the form and wording of development conditions. Sometimes reviews of this nature identify policy issues which are shared with the Planning and Urban Policy Division for

---

<sup>103</sup> [https://www.planning.act.gov.au/\\_\\_data/assets/pdf\\_file/0012/2323011/da-assessment-process.pdf](https://www.planning.act.gov.au/__data/assets/pdf_file/0012/2323011/da-assessment-process.pdf)

<sup>104</sup> EPSDD Annual Report 2022-23 p 66.

consideration. These reviews will also be informed by jurisprudence (in the form of reasons for ACAT decisions).

The Planning Act also requires all decisions to be published, which supports public scrutiny occurring. There is the ability for a proponent to request a reconsideration of a decision by the TPA, and an ability to apply for a review of decisions by the ACAT. During 2022-23, 26 appeals relating to 17 development application decisions made by the then ACT Planning and Land Authority were considered by the ACT Civil and Administrative Tribunal.

More broadly, the Territory Planning Authority, the Chief Planner and EPSDD are subject to the integrity frameworks that apply across the ACT public service.

This brings with it a range of checks and balances that come with operating within the ecosystem of the ACT public sector. This includes<sup>105</sup>:

- being Audited by the Auditor General
- being able to be investigated by the Integrity Commission, whose remit includes powers to strength public confidence in government integrity to ensure transparency and accountability of the ACT public sector
- being able to have complaints made to the Ombudsman and investigated
- being required to submit annual reports to the Assembly, appearing before the Assembly for estimates hearings (as noted this applies to EPSDD not the TPA)
- decision-makers being subject to the Public Sector Management Act which establishes the legal and ethical framework for the ACT public sector, as well as being subject to the Integrity Framework key standards of conduct and accountabilities, the ACT Code of Conduct and ACTPS Values and Signature Behaviours and the Public Sector Standards Commissioner can undertake misconduct and compliant investigations via the Professional standards Unity in CMTEDD.
- decisions being able to be investigated by the Commissioner for Environment and Sustainability.

These mechanisms contributed to providing confidence in the safeguards element of good governance and is a positive indicator of continuous improvement opportunities. These integrity safeguards contribute to the overall health of the governance arrangements.

---

<sup>105</sup> [https://www.cmtedd.act.gov.au/\\_\\_data/assets/pdf\\_file/0003/2004924/ACTPS-Integrity-Framework.pdf](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0003/2004924/ACTPS-Integrity-Framework.pdf)