



Inner South Canberra Community Council

Ashiq Kazi

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By Email: Ashiq.Kazi@act.gov.au

Dear Mr Kazi

INNER SOUTH CANBERRA COMMUNITY COUNCIL (ISCCC) SUBMISSION ON INDEPENDENT PLANNING ADVISORY SERVICE (IPAS)

The ISCCC's comments on the proposed Independent Planning Advisory Service are as follows.

1.1 Do you have any final comments on the IPAS service model and scope?

The ISCCC has not previously been consulted on IPAS.

2.1 Do you have any comments on IPAS's interaction with the new system?

The 'independent' service is to be in the Justice and Community Safety (JACS) Directorate which gives some separation from the Environment Planning and Sustainable Development Directorate (EPSDD) where planning decisions are made. It will be important for the service to maintain its independence. We assume that IPAS will be a contributor to the 'Scheme for public participation,' which is one of the objects in the new Planning Act. We currently obtain help on planning matters from EPSDD and Access Canberra. We assume that these services will remain, and that IPAS will focus on the more complicated and complex situations.

Detailed comments

Introduction

1. The ISCCC welcomes the introduction of IPAS and this opportunity to comment the model and scope.
2. The ISCCC is a voluntary, not for profit, community-based association operating in the inner south area of Canberra, in the Australian Capital Territory. The ISCCC's objective is to preserve and improve the social, cultural, economic and environmental well-being of

Inner South Canberra and the Inner South Canberra community. Eight inner south community groups participate in ISCCC activities.¹

3. The ISCCC's members have considerable experience in seeking reviews of planning decisions² and assisting other community associations, groups and individuals.

Recommendations

4. The ISCCC makes the following recommendations about the IPAS model and its scope:

4.1 The IPAS role should not be confined to providing legal assistance. It should have a recognised role within the ACT government of contributing to understanding the value of administrative law.

4.2 There is a culture within the ACT government of regarding applicants for merits review as a nuisance. For example, one of our member groups (the GNCA), is currently seeking review of a planning decision before ACAT and the Commissioner for Social Housing refers to its submissions as "complaints."

4.3 There appears to be no recognition in the ACT government that merits review decisions can improve primary decision making. During 2023 the GNCA sought merits review of five planning decisions that all involved the same mandatory rule.³ Although the Tribunal's ruling on the mandatory rule (Australian Standard AS 4299-1995) was apparent on the first day of the first hearing ACTPLA continued to ignore the ruling. In all five cases the decision was withdrawn, overturned or reversed. The cost, including lost productivity, external legal fees, expert witnesses, ACAT could have been avoided if ACTPLA had been professional and applied their guidelines. Government needs to be accountable.

4.4 The IPAS role should include collection of data to identify systemic issues to pass on to relevant bodies. For example, IPAS could be assisting third parties to complain about processes or experiences with EPSDD. If patterns emerge, they could be usefully transmitted to the EPSDD.⁴ The record of this role should be included in the proposed review of the IPAS service.

4.5 The IPAS should offer virtual support. This would include guides to the new planning legislation including an outline of the hierarchy of instruments. It should also mesh with the limited support offered to unrepresented applicants on the ACAT website. For example:

- applicants seeking review of a decision, who pay an application fee, might expect that they will be refunded their fee if the decision is overturned. But this is not automatic, and applicants should seek this in their initial application.⁵

¹ Deakin Residents Association, Forrest Residents Association, Griffith Narrabundah Community Association, Kingston and Barton Residents Group, Oaks Estate Residents Association, Old Narrabundah Community Council, Red Hill Residents Group and Yarralumla Residents Association.

² e.g. *Lane & Deakin Residents' Association* [2023] ACAT 72; *GNCA & ACTPLA* [2023] ACAT 13; *GNCA & Registrar ACAT* [2023] ACAT 77.

³ The application of a mandatory rule requiring compliance with an Australian Adaptable Housing Standard. This is no longer a requirement—compliance with the standard is discretionary.

⁴ This is an object of ACAT under its Act, but it is not clear that it occurs.

⁵ *GNCA & Registrar ACAT* [2023] ACAT 77. (The GNCA has sought an ex gratia payment from the Treasurer).

- applicants could be directed to useful sources including “What’s New” on the Legislation Register.
- There are useful examples of guidance in other jurisdictions.

The records of this role should be included in the review of the IPAS service.

4.6 The IPAS should be transparent about the significant change in ACT planning laws and produce lists of useful precedents as they emerge. This will help its clients understand the limited value of previous court and tribunal decisions and the limited scope for review. For example, people will be used to applying rules but now they will be seeking review of the exercise of discretions.⁶

4.7 It is proposed that volunteers will assist IPAS, which could liaise with community groups and provide information about them to clients. Records of outreach to potential volunteers could be included in the review of the IPAS service.

4.8 IPAS staff should be well trained in dispute resolution and given opportunities to participate in administrative law conferences and seminars. People invest their life savings in buying a house and maintaining a mortgage and expect planning to be conducted in an orderly, transparent and reasonable way/manner. Naturally, they become angry and upset when unexpected changes lead them to seek review of decisions and they experience the challenges and complexity of the system. IPAS staff will need special skills.

4.9 IPAS will need to work hard to overcome the trust deficit and lack of confidence in the ACT planning system within the community. At present there is little trust, confidence, clarity, certainty, consultation or transparency in Governance process.

4.10 To achieve the IPAS mission it will be important for its staff to be responsive, objective, transparent, well-informed, impartial and open-minded. The IPAS mission should be recorded and included in the proposed review of its service.

5. At this stage we cannot estimate what resources will be needed for IPAS to function effectively, but it will need to be properly resourced if it is to be effective. In addition to a lawyer, subject matter experts should be available to consult including architects, engineers, landscape architects and traffic experts.

Yours sincerely



Colin Walters
Chair, ISCCC

⁶ The main use of rules now is for exempt development on which review cannot be sought.