

Wednesday 15 June 2022

Environment Planning and Sustainable Development Directorate
GPO Box 158, Canberra ACT 2601

Re: Draft Planning Bill 2022

Background

North Canberra Community Council (NCCC) has been operating for over 22 years and covers the 15 Inner North suburbs of the Kurrajong electorate. Representatives of each of the local residents' associations make up the Executive Committee. NCCC is the officially recognised peak body, and has 276 members.

The NCCC draws on the skills and backgrounds of unpaid volunteers, who are actively involved in a wide range of local issues, community building and environment protection projects. Some of our members have direct experience with re-zonings, technical amendments, Territory Plan variations, precinct and development codes, non-compliant development applications and lease variations, privately certified dwellings that fail to meet mandatory rules, pre-DA consultations, and mounting appeals to the Tribunal.

The Standing Committee on Planning and Urban Renewal published its 66 recommendations in September 2020¹. Many of those still appear not to have been implemented.

Summary of our major concerns:

1. The Planning Review has overlooked the urgent issue of restoring trust in planning, an essential government service whose performance has been consistently below average.
2. This Review has been conducted in an opaque manner for more than 3½ years up until this stage. Producing over 750 pages for the public to digest in the form of a Draft Bill and its two associated Regulations has the hallmarks of a *fait accompli* and forces the public to rely on what we believe are misleading fact sheets.
3. The internal process adopted has denied the public adequate information about how the system that currently operates works, or any practical means of informed discussion in order to provide constructive input during the course of the Review.
4. The framework of the Draft Bill perpetuates and hardens what is at its core a disturbingly anti-democratic system that is increasingly focused on facilitating and removing obstacles to maximise land development, in greenfields and infill settings. We are concerned about the removal of pre-DA consultation.
5. The ACT's Traditional custodians continue to be disenfranchised. The lip service contained in the Draft Bill perpetuates historic injustices at a critical turning point in the nation's history. Land is central to Aboriginal culture, so examining and responding to those connections requires a sensitive well managed transparent process that meets the needs of all stakeholders.
6. The Draft Bill appears to violate necessary legislative limits on planning powers

The Draft Planning Bill 2022 proposes an expansion of the powers of the executive branch of the ACT Government in relation to planning while limiting or constraining the involvement of

¹ Legislative Assembly Standing Committee on Planning and Urban Renewal Report 12
https://www.parliament.act.gov.au/__data/assets/pdf_file/0008/1543994/Report-12-Inquiry-into-Engagement-with-Development-Application-Processes-in-the-ACT.pdf

the legislative and judicial branches of Government. This is contrary to the Doctrine of Separation of Powers embodied in the Australian Capital Territory (Self-Government) Act 1988 which is designed to prevent the abuse of power.

The structure of our system of government divides power between

- the Legislative Assembly, that makes and amends the law;
- the executive, that administers the law; and
- the courts and tribunals, that make judgements about the law.

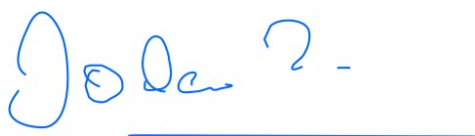
This separation of powers is designed so that one branch of government does not have too much power and prevents one branch of Government from abusing their power.

The following are some aspects of the Draft Planning Bill 2022 that are contrary to the Doctrine of Separation of Powers:

- Allowing the Territory Planning Authority (an executive body) to make amendments to the territory plan (which is a legislative instrument), under Part 5.4.
- Requiring the Territory Plan (a legislative instrument) to be amended to be consistent with an Estate Development Plan (an instrument approved by the executive), under section 40.
- Requiring the Territory Plan (a legislative instrument) to give effect to the planning strategy (an instrument made by the executive), under section 43.
- Limitations on challenges to the validity of Territory Plan provisions in courts and tribunals, under section 80.

What we would wish to see instead

- (1) Clear justification of the need to replace the current Planning and Development Act in the light of reputable analyses demonstrating that the proposed planning regime will not operate as advertised (Baker et al 2006; Frew 2011; Frew et al 2016);
- (2) Clear definition of 'desired outcomes' capable of enforcement, in particular with respect to sustainability, energy efficiency, affordability, supportive/social housing, common goods, green space and design;
- (3) Design competitions for major projects to provide choices for community to consider and to improve the quality of developments;
- (4) Expanded opportunities for community engagement including genuine and responsive pre-DA community consultation;
- (5) Private building certifying to be returned to the public service to reduce potential conflicts of interest & an oversight of 'exempt developments';
- (6) Enduring and properly consulted district plans – building on earlier 'neighbourhood planning' that involved extensive community engagement, relevance and local place knowledge;
- (7) Effective, long-term transparent strategic and spatial planning, rather than top-down decision making and planning that simply responds to developer initiatives (e.g. de-concessionalising of leases by clubs and other organisations with only financial incentives);
- (8) This Bill should only be considered and consulted on in connection with the review of the Territory Plan in particular because it remains unclear how an outcomes-based system will relate to a rules-based system.



Jochen Zeil
Chair, North Canberra Community Council on behalf of the NCCC committee.

See overleaf.

References

- Baker DC et al. (2006) Performance-based planning: Perspectives from the United States, Australia and New Zealand. *Journal of Planning Education and Research* 25:396-409.
- Frew TG (2011) The implementation of performance based planning in Queensland under the *Integrated Planning Act 1997*: An evaluation of perceptions and planning schemes. PhD Thesis, Queensland University of Technology
- Frew T et al. (2016) Performance based planning in Queensland: A case of unintended plan-making outcomes. *Land Use Policy* 50: 239-251