



Protecting, promoting and enhancing the economic, cultural, social and environmental well-being of the residents of North Canberra

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The North Canberra Community Council receives funding and support from the ACT Government

Wednesday 16 November 2022

The Secretary
Standing Committee on Planning, Transport, and Community Services
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

North Canberra Community Council (NCCC) Submission to the INQUIRY INTO THE ACT PLANNING BILL 2022

NCCC acknowledges some positive aspects of the Bill notably the inclusion of the principles of good consultation in proposed Sections 11-13).

However, NCCC continues to have the following key concerns, most of which were submitted to EPSDD earlier, but ignored:

1. **The Planning Bill will not put people at the heart of the planning system.** People affected by development proposals will have less opportunity to comment on development proposals.
2. **The Planning Bill relies on opaque and undefined “desired outcomes”.**
3. **The Planning Bill will give greater discretionary powers to the planning authority,** which will be able to ignore community comment, as it sees fit.
4. **The removal of the pre-DA consultation process for large development projects.**

In place of pre-DA consultation, the Explanatory Statement states that: "Mandatory pre-DA consultation is being replaced by the principles of good consultation, with early engagement identified as a principle of best practice planning." However, the principles of good consultation only apply where consultation is required under the Act (see proposed s 12(2)) and consultation is no longer required in relation to a DA.

In short, the principles apply to community consultation on topics like the development of new District Plans, but our reading of the Bill shows that consultation is no longer mandatory for large DAs.

5. **The concept of 'territory priority projects' which we understand replaces the Minister's call-in powers that are currently in the Planning Act.**

It is worth quoting the proposed provision in full: proposed Section 215: Declaration of territory priority projects

(1) The Chief Minister and Minister may jointly declare that a development proposal is a territory priority project (a territory priority project declaration) if the Chief Minister and Minister are satisfied that the proposal—

(a) would achieve a major government policy outcome that is of significant benefit to the people of the ACT; or

(b) would substantially facilitate the achievement of the desired future planning outcomes set out in the planning strategy, a relevant district strategy, the territory plan or any relevant zone; or

(c) is for significant infrastructure or facilities, that are of significant benefit to the people of the ACT.

It seems there will be a 15 day public consultation period prior to a declaration being made (proposed s 215 (4)(b)), but once a declaration is made third party review rights will be removed in respect of any development application for a priority project (proposed Schedule 7, Part 7.2).

By way of example, if a developer obtained a declaration that their development was a territory priority project, all review rights in relation to the project would be removed. This completely shuts out the views of community regarding major developments.

In short: The framework of the Bill perpetuates and hardens what is at its core a disturbingly anti-democratic system that is increasingly focused on facilitating and removing obstacles to maximize land development, in green-fields and infill settings.

6. The Bill appears to violate necessary legislative limits on planning powers

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 NCCC wishes to see in a Planning Bill:

- (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 (e.g. Frew T et al. (2016) Performance based planning in Queensland: A case of unintended plan-making outcomes. Land Use Policy 50: 239-251);
- (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 and engineering to be returned to the public service** to reduce potential conflicts of interest & an effective 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-concessionalizing of leases by clubs and other organizations 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;
- (9) **NCCC also requests that the definitions and application of the concepts around ecologically sustainable development be reviewed** by an organization or firm with expertise in climate and planning law, to determine whether it can be considered 'world-leading' or of the highest standard relative to other planning frameworks around the world;
- (10) **A clear explanation of how the Planning Bill ensures that the macro objectives around climate resilience will be applied consistently at the micro level.** The definition of 'sustainability and resilient principles' in Section 9 is quite vague and open to the interpretation of the Chief Planner. E.g. "Mitigating the effects of urban heat" (mitigating to what extent?), "achieving energy efficient urban environments" (how much more energy efficient?), "minimizing loss of habitat" (significantly minimising, or just minimising to a limited extent?), and so forth;
- (11) **We request more stringent and quantifiable metrics that can be applied to these definitions to ensure they are applied to an acceptable standard.** For instance, energy efficiency ratings, or carbon performance targets, or access to suitable cycle lanes/EV charging points/green transport infrastructure ect. NCCC recognises that climate resilience and mitigation are reflected in the object of the bill, but it remains unclear how these principles will actually be implemented on a case-by-case basis.

With kind regards,



Jochen Zeil
Chair, North Canberra Community Council.