

This is a short submission in response to the draft new circulated ACT Planning Act .

Overview

for the wider community, I believe that the process of promotion and awareness of this new draft ACT Planning Act, understanding it and its implications through its details, has been extremely disappointing, leaving many without an opportunity to have their say.

I have called for an extension of the so-called consultation period from June 15th and believe consistent with truly democratic principles and recognition of the practical realities of the lives of the residents of the ACT, especially at this time, an extension of the so-called consultation period should occur.

In section 15 1 (p), the following function for the Planning Authority is listed: “to promote public education about, and understanding of, the planning system, including by providing easily accessible public information and documentation on planning and land use.”. Clearly already this ostensible function has not been implemented at the very first stage of s new process of reviewing the present Planning Act.

Failing this, I propose that a detailed Feedback process be implemented. This call means the production of a document which lists the details of all points made in submission received and to which part of the Draft Act they apply, and the responses to these submission points. No generalities here thanks.

Subsequently, and before any proposals go to the Legislative Assembly, based on how the submissions and their points of view have been handled, a new Draft Act should then be produced showing where changes have been made from the original Draft. This document is to be made available to the public.

Other key points

1. Outcomes-focussed

Under section 7 1 (a), which identifies the Objects of the Act, I strongly oppose the idea of what is an outcomes-focussed because, aside from the vacuity of the meaning of the term, there is no evidence that the so-called process actually achieves the desired outcomes. On the contrary, available evidence suggests quite the reverse. Clear guidelines are required when planning decisions are to be made.

Under section 7 2 (b), the need for certainty and yet a balance with innovation as a principle is supported but reading throughout the Draft Bill appears to leave this principle as no more than simply good words. At some point in these objects there is a need to expand on how such an aspired goal is to be implemented.

2. Transparency

As an Object for this Act, it is vital to highlight the need for a fully transparent process not only with regard to individual issues where transparency is identified eg DA applications, but across the wide range of processes operating under this Act. This point is one to include under the definition section 8.

Linked to this issue of transparency is the ability of the public to know about and comment upon, with a recognition of the veracity of their comments, all aspects of activities associated with developments in the ACT. It appears to be a common complaint about developments within the ACT

that public concerns about new developments are all too often given short shrift and any submissions made in regard to such developments by the public ignored or certainly not answered.

Section 10 of the Act highlights this point which says “The Minister may make guidelines about principles of good consultation and how the principles are to be implemented.”. This is an appalling and definitely undemocratic process. It should be replaced with a set of principles and practices in accord with a genuine place of public comment on all developments in the ACT.

In section 15 1 (o) of the Draft Bill, a function of the Planning Authority is “to provide opportunities for participation in planning and decision-making processes;”. This is a fine statement but how is it to be implemented? This appears again to be one of the many aspects of this Draft Act where words are printed but not supported by real or transparent back-up process.

A similar issue appears in section 37 3 regarding District strategies and where the draft Bill states “must undertake public consultation before making the district strategy.”. The generality of this statement is of deep concern. It neither identifies what is sought from such consultation, what key principles are to be adhered to by way of the consultation process, nor how the process will be run.

3. Intergenerational equity

Intergenerational equity is mentioned in 8 2 c. However, as with other such important principles, subsequent review of the Draft Act fails to identify just how this will occur. Unless identified, how can those concerned with actions which come within the purview of the Act know what they are to do to adhere to the requirements of the Act when law?

4. Environmental sustainability

As per the point No 3 above. I note the use and value of Environmental Impact statements as one mechanism to implement the idea of sensitivity to the environment. However, the concept of environmental sustainability appears to be missing in the sections where this matter of EIS process is written. I understand other groups such as the Planners Institute of Australia is also concerned with the gap between intentions and actions on this subject.

5. Adherence to the law – compliance

In considering the list of objects and principles, the issue of compliance is important. Regarding the way developments occur, how the bigger picture aspirations underpinning the purpose of a planned city are met, is an issue because the lack of clarity in this draft Act and how they will be enforced. There is a need to demonstrate how compliance to the principles set down in the draft Act will be enforced.

6. Land management Plans

The present Act requires that the Custodian of an area of Public Land (as identified in the Territory Plan) must manage the land in accordance with the Land Management Plan for the Area (the Act Section 316 (i) (b)). The Act also specifies (Section 321 (i)) that the Custodian must prepare a Land Management Plan. The Act also sets out the provisions for reviewing and reporting on such Plans.

I understand it has been a long struggle to try and get the Act complied with in respect to Land Management Plans. This matter now needs to be made abundantly clear that such plans are to be prepared and adhered to.

7. Development assessment and approvals – chapter 7.

It is not clear in this Draft Planning Act if the concept of a concessional lease is to be handled in the same way as the present Planning Act requires it. I note in para 140 (a) that for a development application, the decision-maker means— (i) if the application is for the removal of the concessional status of a lease—the Minister;”. This is an appropriate location for a decision maker on such an issue but before any decision is taken which might take away a concessional lease there must be, as presently applies, a mandatory requirement on the proposer of such a change that there is a clear public benefit in putting forward such a proposal and the local community is properly able to express its views on any such proposal.

Part 10.4 covered many aspects of concessional leases. Importantly in section 288, we note the need for a community lease to report upon the public benefit of being given such a lease. This needs to be an activity that is carried out, much as Land Management Plans are required of public land.

Division 10.5.3 deals with varying concessional leases. This is a decision made by the Minister. However, what is missing for example in section 301 3, is the requirement for the minister to hear from the community as to the net benefit or otherwise which occurs through any change to this concessional lease status. It is vital that any application to change a concessional lease status properly engages the local community which will be affected by any such proposal and before any decision is made on this matter

8. Development Applications

While it is understood there must be public notification of Development Applications made to the Planning Authority, it is unclear from the draft Act of the right for the community to have its say on any such proposal. It is vital that early engagement with those in the community around DA's is carried out. My view is that the argument that there is little benefit from such early engagement by the community is fallacious. It depends on the way this is carried out, not in the fact that it is early in the consultation period.

9. Concessional leases

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