



Covering  
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## PLANNING BILL 2022

Friends of Hawker Village Inc. (FoHV) was formed in 2010 to protect and enhance the residential, suburban, social and environmental qualities of the Hawker Village commercial precinct and the surrounding suburbs of Hawker, Page, Scullin and Weetangera. In this time, FoHV has noted some inadequacies of the Planning and Development Act 2007 and the Territory Plan 2008. We do not, however, see the necessity to largely rewrite these instruments. It has been our experience that changes to the planning law inevitably have omissions or use of words that need correcting to achieve the desired outcome, e.g. DV369. The more rewriting, the more corrections will be needed in future.

In relation to the current draft Bill, we make the following observations, based on our experience relative to our organisation's aims:

### 7 Object of Act

(1) The current wording of this section in the Planning and Development Act 2007 is:

The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT

The intention is to replace it with words that increase flexibility in planning with less guarantee of the outcome. FoHV agrees that the Act should support and enhance the Territory's liveability for the sake of the residents but are not sure about the significance of "prosperity" in this context. Does this apply to the prosperity of the developers, architects and builders who design and construct it?

The online guide to these changes declares that one of the aims is to "put more focus on outcomes than rules". The relevant factsheet states that

This means the planning system is centred on quality, results and performance rather than compliance with prescribed technical rules.

This sounds contradictory in that rules are designed to guarantee particular outcomes. They are simpler and easier to assess than trying to decide whether the outcome is good or bad. There will inevitably be an increase in bad outcomes from the community perspective. Further, the rules need to be written in such a way that they are all applied, rather than being overridden by other provisions such as criteria. On the other hand, the

rules need to be assessed in the light of relevant provisions such as outlined in the current Zone Objectives. Our experience in ACAT is that compliance with the rules was taken as overriding the need to consider the Zone Objectives on the presumption that the rules had been designed to implement the objectives. Observation suggests that it is not possible for rules to be applied and have the same desired outcome in all situations. The local environment must be taken into consideration when assessing DAs.

- (a) FoHV, however, are pleased that the planning system will be outcomes-focussed in a certain context. There has been a notable failing of the planning system to date in that developments have not been required to consider the unique characteristics of a block and its physical location in determining the appropriate design and number of units. A current example is the redevelopment of 7 and 9 Smith Street in Weetangera. These two RZ2 blocks are located on the outer side of a 90-degree bend in the road, which is the narrowest width used for suburban roads and which has no footpath. The two original dwellings are being replaced by 14 townhouses. One example of a negative outcome in regard to this development is as follows: Because the blocks are located on this bend, there is minimal area of nature strip, which will have difficulty accommodating the 28 rubbish and recycling bins that will be put out for collection each week. The rubbish trucks will congest the road along the bend, as the construction trucks are now doing. The development raises other serious road safety risks. Such practicalities are apparently not required to be considered in the current planning process.

The term “outcomes-focussed” can also be applied to indulgence of developers in permitting infringements of the rules or, in fact, minimising the use of rules. We disagree with this approach. Rules are only created where there is a need for a good, safe outcome. Bending the rules will undermine the outcome desired for the community. Unless the intended outcomes are defined clearly, then there is too much scope for developers and EPSD to make their own judgment about what is a desirable outcome. Developers should be responsible for achieving good, safe outcomes, rather than simply enhancing their commercial interests.

- (b) It is difficult to see how the Smith Street development will be ecologically-sustainable unless the planning strategies and policies address, in the first place, the need to determine the maximum number of dwellings appropriate for such a street, designated for densification, rather than simply focus on the number of dwellings per block. At present, several other blocks in Smith Street have been sold for redevelopment and it is possible that at least 33 dwellings will be added to the original 19 dwellings. There seems to be no limit to the amount of redevelopment in RZ2 areas. This requires clear articulation to control unrealistic expectations. Whilst the major controls will be in the Territory Plan, there needs to be recognition of this fact in the Planning Bill. The Territory Plan should specify a maximum permitted in the best circumstances but this should not be regarded as definitive, rather it should

be clearly stated to depend on the specific features of the block and its surrounds. This needs to be stipulated in the Planning Bill.

- (2) (b) This provision is most likely contradictory in suggesting that “certainty of processes” can be assured whilst “providing scope for innovation”. It is not stated how the current processes stifle innovation. Planning rules are practical measures designed to ensure safety and commonsense arrangements. The current planning Acts dating from 2007 and 2008 provided flexibility via criteria, which was exploited by developers but did not satisfy many who continued to complain that the planning system prevented “the best outcome” being achieved. Surely, a good architect or planner is one who can produce a good design within the stipulated rules that reassure neighbours of the outcome. FoHV believe that the community relies on rigorous application of the rules to guarantee the quality of their suburb. This proposed provision is likely to simply permit developers to flout the rules to suit themselves.
- (3) (b) and (c) These provisions stress the importance of planning for population growth and protecting the ACT’s biodiversity and landscape setting. Instinctively, these two goals are contradictory. There has been little serious discussion of how these goals can be achieved, with the result that new suburbs and parts of old suburbs now lack space for trees and other greenery. When densification was introduced in 2007, this important issue was ignored. It is only now that the need to preserve existing trees and to have adequate green space to combat global warming is being incorporated into the planning legislation. The difficulty of accommodating a growing population without increasing the greenhouse effect appears to be glossed over.

## **8. Meaning of ecologically sustainable development**

This section is concerned with the continued achievement of economic development whilst attempting to protect ecological processes and natural systems. Again, these two aims seem contradictory. At the very least, we hope these provisions will address the current practice of scraping new development land clean of soil to level the block and, where necessary, to excavate the block to facilitate concrete slab floors, such as is happening at Whitlam. These actions were not necessary prior to the 1970s, when new residents moved into newly-built houses on blocks that still had remaining areas of natural, grassed surfaces. Unfortunately, introduction of the new Planning Acts in 2007 and 2008, totally ignored these needs with the result that new suburbs have little room for trees and other greenery on residential blocks. This is unlikely to be rectified by the current revisions unless they are applied with serious intent.

## **IN CONCLUSION**

1. Rules are important and guide developments to a better outcome.
2. Rules are not, indubitably, enough on their own.

3. A good outcome depends on the development fitting in with the physical characteristics of the neighbourhood.
4. Ecologically sustainable development involves assessment of a block or blocks and working with nature, not fighting it.
5. Increased flexibility might appease the development industry but it worries the community and greater consideration is needed to ensure the best outcome for a satisfied community and an environmentally-friendly urban development.

Colin Lyons,  
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Friends of Hawker Village Inc.