

CPAG submission Part 1 regarding the draft ACT Planning Act

June 14 2022

The Canberra Planning Action Group (CPAG) has, since its inception in 2019, been concerned as to the efficacy of the ACT Planning Act. This concern has many components but includes –

- its implementation in which support for a suitable urban form to underpin an ecologically sustainable Canberran future appears weak
- the apparent undue influence such groups as developers have in decision-making
- an increase in social inequity and lack of social accommodation
- a decided lack of transparency in decision-making, and
- dismissal of community interests in so many planning issues

The ACT Planning Strategy (2012) identifies a future scenario for Canberra in 2030. Looking into the future is challenging in a conflict-ridden field of human endeavour. This issue has become even more significant in light of climate change impacts and a serious erosion of confidence in our political system in a society ever more stratified between those who are wealthy and those who are not.

Our urban form continues to change under the influence of the way the ACT Planning Act works and is interpreted and reflected in an increase in higher density living, smaller blocks with smaller backyards and housing designs which obliterate various aspects of the natural and social worlds vital to our community wellbeing now and for future generations.

Hence, we support the need for a review and change to the ACT Planning Act but find what has been proposed as a result of such a review is a deeply unsatisfactory outcome.

General concerns about process

The following points are made regarding the process of reviewing the Planning Act of the ACT and the circulation of a Draft Planning Act.

Many agree there is a need for a new ACT Planning Act. What however was needed was a base-line document which specifically sets out the identified failures of the previous Act. Instead, a generalized description of what supposedly was identified as problems with the existing Act was produced

without any indication of specific concerns and submissions made to redress issues identified by the apparently 1000 or so consulted people. Nor is there any indication of where and how the submissions from such preliminary submissions were taken up and reflected in the new Draft Act.

However, having produced a new Draft Planning Act, which is a very different one from that in existence now, what was said before its release is irrelevant as the ACT community is now asked to review a quite new document.

CPAG has been most concerned as to the lack of awareness raising and promotion of the process to the ACT community of the review of the draft ACT Planning Act. This means many residents whose future is being discussed here do not have an opportunity to 'Have their say'.

Since a new Draft Planning Act has direct implications for all in the ACT community, then special efforts are required to identify and support widespread awareness and understanding of what was happening in regard to a new Planning Act. To have carried out the review lasting just a miserable three months, at a time when a federal election was taking place, when Covid 19 remains a serious community issue and there exists a general level of anxiety within the ACT community about personal and family financial and employment security, without adjusting for these matters is a dereliction of responsibility. Such approaches to the lack of concern for the community continue to underpin a deep doubt as to the desired outcomes from this process. CPAG continues to call for an extension of the consultation period for a period of 6 months from June 15th 2022. Below we will return to an alternative to this extension call.

Additionally, CPAG is deeply concerned as to the method of consultation. At a time when confidence in public processes is seriously weakened, when research identifies effective ways of community engagement and when traditional so-called community consultation processes demonstrably fail, it is astonishing that the Draft Planning Act review processes rely on an occasional drop-in electronic forum or the 'Have your Say' electronic link as ways to reach out to the wider community in the ACT. CPAG can provide a range of ways by which better and more equitable community engagement processes can be undertaken.

A key factor in this process of consultation failure is that there is little or no effort apparent in the documentation provided to summarize for the ordinary

citizen the issues for consideration. A mass of available documents covering so many different matters maybe fine for those who have the time and skills to review them but for most, voluntarily wanting to provide a viewpoint, this technique is extremely unhelpful.

In sum, these process failures on the part of the ACT government and the EPSDD erode public trust. Lack of public trust only means further angst and disputation later in the process.

Proposal:

Bearing in mind the unjustifiable cut-off date for consultation, and that if no extension of the public consultation is to happen, CPAG proposes at a minimum, a Feedback document must be produced and made public. This Feedback document would be a minimum step in any proper consultation process. It would contain the specifics of the concerns of those who made submissions, and identify precisely what was done with these matters to which attention has been drawn. Thus, it would be followed by a new Draft Act where the issues of consultation are shown to have been taken up. This is to occur before any document goes to the Legislative Assembly for consideration.

Draft Act specifics

The following are points made regarding specific elements of the Draft Planning Act.

i. Outcomes-focused concept

A key theme underpinning the design of this Draft ACT Planning Act, is that it is 'outcomes-focused'. Not only is this description an oxymoron, but research shows this idea is inherently deeply flawed. Here is a link to a paper produced by CPAG providing in support of this view -

<https://www.canberraplanningactiongroup.com/post/outcomes-focussed-planning-the-spurious-foundations-of-act-planning-reform>

CPAG calls for a detailed statement to be provided to the Planning Authority to guide decisions on any matters before it and to reject the idea of some vague desired outcomes as the key process step.

ii. Objects of the Consultation Draft Act

Section 7 sets down the purpose of the Draft Planning Act. CPAG seeks the removal of section 7 a, regarding the statement of an outcomes- focused

approach as lacking a supporting evidence base to demonstrate this is valuable or an improvement, and also is unachievable as available research demonstrates. CPAG calls for clear guidelines to replace this approach regarding decisions made under the new Act.

Section 7 b – removes the words following “...ecologically sustainable development” for no caveat to this concept should be applied if the future of the ACT community is to address such challenges as climate change impacts.

Section 7 c – instead of providing for a scheme of community consultation, replaces this with the words “describes in detail a process for community consultation.” The existing words are vague and refers only to a generalised ‘scheme’, giving rise to considerable doubts as to the veracity for community engagement with planning issues as suggested as an objective in section 7 2 (b).

Section 7 3 begins with “The following matters are important in achieving the object of the Act.” It is s a fascinating statement. What does this mean in terms of action under the proposed Bill? Does it mean anything will be done in support of these matters identified?

Are there any other matters missing such as intergenerational equity or removing or minimising social inequity, matters touched upon as being defined under the term ‘Ecological Sustainable Development’ in section 8?

The definition of economic development is interesting especially with respect to Intergenerational generations issues - “...without compromising the ability of future generations to meet their needs.”. The idea of ‘needs’ requires much greater deliberation as ‘need probably will include matters which are prevented from being realisable due to actions taken under the present and proposed Planning Acts. Are their futures to be constrained because of what we are now doing? This matter needs far greater investigation and cannot be retained in the Draft Act as it stands.

Other key issues

Related to the above discussion is a general point which is that there appears to be no direct link for action to environmental matters per se. We note The Planning Institute of Australia says the draft Planning Act is not specific re sustainability and resilience principles or natural environment and conservation Principles. This is a view with which CPAG agrees.

Other specifics of the Draft Act highlighted in research as significant weaknesses include:

- **the so-called consultation process in various sections of the Draft Act effectively removes any requirement for public consultation** and needs to be significantly changed
 - The vision for this Act is: ***Our vision is for a system that is accessible, easy to navigate and encourages participation in planning.***¹ The actuality appears in this Draft Act to be the opposite.
 - The Draft Act (s.10) has a heading: ‘Principles of good consultation’, but leaves it to the Minister who ‘may make guidelines’. This must be changed to outline the process of consultation and not to leave such a vague statement in any forthcoming Act.
 - **The Draft Bill also removes the current requirement for ‘Pre-DA Community Consultation’** claiming this process isn’t working. This statement is highly contested. The engagement of stakeholders in consultation around DA’s is a matter of the method process, not elimination of consultation.
 - **Concessional grants processes are being moved directly to the political arena and the present Act requirement for mandatory consultation with the community appears to be dismissed – see below for further comment.**
- Planning strategy – our understanding is that this Strategy is made by the Ministerial Executive (presumably on advice of the Planning Authority), and subject only to unspecified ‘public consultation’ - but it also appears there is NO apparent role for Legislative Assembly. This apparent omission of the Assembly needs to be changed and is quite a failure of democratic principles
- District Strategy – this refers to a process potentially determined by the Executive, but again according to the draft Act, also subject to unspecified ‘public consultation’ – the idea itself is too vague but again, NO apparent role for Legislative Assembly or for district community councils? It is vital local communities are genuinely and properly consulted in the development of District Strategies.

¹ <https://yoursayconversations.act.gov.au/act-planning-system-review-and-reform>

- There appears to be a lack of confidence, certainty and clarity around concepts and governance details of the processes under the proposed draft Planning Act covering for example the roles of the Chief Planner, the relationship to the Minister, the role of the Minister etc. Clarity is required and adjusted so transparency is achieved and responsibility goes to those who are clearly accountable for decisions made regarding Planning matters in the ACT
- There also appears to be a lack of trust, transparency and accountability in the higher-level processes to take place under the proposed Act. The Legislative Assembly, for example, appears to be sidelined in planning policy which assists emasculates public input on development applications. In its place appears to be decision-making by a bureaucrat with little transparency. This is at odds with other state government processes. Additionally, although this in general terms may have been the case under the present Act, this situation for any future Planning Act is unacceptable
- There is no clear process by which the issue of intergenerational equity is to be specifically dealt with
- Concessional lease arrangements appear to have been changed. Presently there is a mandatory public consultation process about this issue. Under the present draft Act, it now appears the politicians are to make decisions upon this matter. It is agreed that concessional leases and any deconcessionalisation attempts are appropriate for politicians (the Minister) to decide upon. However, the present Planning Act requirement that there be a clear public benefit regarding any de-concessional process must remain as also there must remain the requirement for proper public consultation on the issue.

Summary

CPAG proposes there should be an extended consultation period regarding this draft ACT Planning Act from June 15th 2022.

Failing this, a Feedback document should to be produced specifying the issues raised by submissions and the specific actions taken in response to these submission points. This then is followed up by releasing for public view another Draft Planning Act before any document goes to the Legislative Assembly

We seek a written response to this submission identifying exactly what has happened regarding the points we make in it.

Finally, in a second submission, there are links provided to recent newsletters produced by CPAG in which are a series of papers developed in response to the call for submissions regarding this Draft Planning Act.

These articles are part of our submission.

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Convenor

CPAG

June 15th 2022