

Submission to the ACT Planning System Review and Reform Project

This submission responds to the draft Bill and subordinate regulations that are included on the project website, [ACT Planning System Review and Reform Project | YourSay ACT](#). The submission also considers the information in the fact sheets provided on the site.

Aims of the Project

The case for a new Planning Act, new Territory Planning Authority (the Authority) and new Territory Plan is not clearly articulated but appears to be threefold:

- to encourage good design based on an outcomes-focussed approach,
- to involve the community in the planning process and
- to ensure that planning responds to future community needs.

These aims are barely discernible, buried as they are in the various fact sheets. Perhaps for this reason, the draft legislation fails to address them, raising the question of why there is any need for new legislation and a new Territory Plan.

There are several ways in which these aims can be better realised by changes to the draft Bill.

1. Community Engagement

The draft legislation does little to assuage the current low level of community trust in the planning system. The objects of the Bill are silent on the role of the community and the proposed planning processes give negligible weight to community involvement. The Bill perpetuates the significant power imbalance that privileges developer access and interests over those of the community.

The role of the community should be given a higher priority in the Bill by making the following changes.

Community Engagement should be included as an object of the planning legislation.

This means that planning processes and outcomes must be undertaken in a way that is consistent with building this engagement and thus community trust. Progress towards this object should be a reportable requirement.

The principles of good consultation in strategic and spatial planning need to be clearly articulated rather than simply allowing that the Minister ‘may’ provide a guideline (Section 10). Enunciation of these principles will signal a more equal emphasis on good and inclusive processes and give greater weight to community interests. Several examples of such principles have been provided in at least one other submission to this project (e.g. Johnson, [THE ACT DRAFT PLANNING BILL RJ 7 May.pdf\(amazonaws.com\)](#)).

2. Incorporation of best practice principles of good governance

The only provision for community consultation is at the project level with no continuity of input from community representatives into decisions of the authority. This is an aspect of the Bill’s more general silence on governance. The absence of mechanisms to ensure good governance is most unusual for a statutory authority in the 21st century and indicates a degree of self-satisfaction with the current, fairly autocratic and minimally accountable decision-making processes. The following principles need to be incorporated in the Bill:

- **A Ministerially appointed Community Advisory Council should be established to ensure continuity of high level community involvement.** The Authority (i.e., the Chief Executive) should be obliged to *consider* the advice of this Council. The Council could reflect a representational balance that might include but not privilege, peak industry interests over those of the Canberra community. An added advantage of the committee would be to foster understanding between industry and community at the peak level.
- **A role for District Committees** should be enshrined in the Bill as part of the foreshadowed district strategies. These may be a formalisation of the existing community councils. Their normal line of communication may be to the overarching advisory council, but this would not prevent them making representations direct to the Minister or other Assembly members.
- **Formal published reporting requirements** that adopt accepted best practice standards for statutory authorities. At a minimum, this would involve the Authority providing an annual report for consideration by the Legislative Assembly and subsequent publication. This report would include an assessment of the Authority’s achievements against key performance indicators as agreed by the Minister, and

audited financial statements. This would be in addition to the Bill's current provision for reports that the Minister might require from time to time.

- **Clear community-accessible dispute settling arrangements.** Divergence, and sometimes tension, between community and developer interests will be inherent in any planning system, however robust. This Bill neither recognises this nor does it provide any dispute resolution processes short of judicial review, the nature and cost of which tends to outcomes that favour the developer. There are several measures that could equalise this balance including:
 - Incorporating good dispute mediation and resolution measures as part of project design, monitoring and evaluation.
 - Removing the 'material detriment' eligibility requirement for those seeking judicial review. This impediment is particularly harsh when new developments are at issue since there are few if any community members who can meet the requirement (usually defined as proximate location to the site in dispute).
 - Creating and funding a Community Advocate to advise and, where appropriate, act for community members seeking judicial review, thus removing the very real barrier of affordability of legal advice.

3. Envisaging and Providing for the Future

Despite its claims to be future oriented, the Bill fails to achieve this in many respects. Two of the most important failures are mentioned here by way of example.

- **An inadequate concept of good project design.** Although the Bill emphasises an outcomes-based approach to planning, it is heavily loaded towards the front-end approval process and fails to acknowledge that project planning for innovative and creative design requires equal or greater attention to monitoring and evaluation during the life cycle of the project. Innovation necessarily carries a degree of risk and failure and the absence of appropriate life-cycle attention risks replication of errors and outcomes that are unfit for purpose. There are several examples of this on the

Kingston foreshore and in the Molonglo 'town centre' and a real risk of it occurring in the DA amendment proposed for Lawson Stage 2. Incorporation of independent monitoring and evaluation procedures as part of project design should also include user satisfaction surveys especially for residential developments.

- **A mismatch between government intentions and professed principles compared with the actual provisions of the Bill.** One example of this concerns the aspirational goal of urban regeneration. With much of the building stock in established suburbs now in end-of-life condition, the justification and the demand for knock-down rebuilds is likely to grow rapidly in the foreseeable future. Yet the Bill perpetuates the glaring anomaly that allows DA exemption for this stock to be replaced by houses that rival the largest of any city in the world while prohibiting subdivision and separate title construction of town houses. This contradiction between government goals the regulatory framework is even more anomalous when such subdivision is compared with the much smaller blocks of 250 square metres or less that are constantly being approved for dwellings in the newer estates.

4. Better synchronisation between the key legislated elements the project.

The Bill should be finalised in conjunction with the new Territory Plan and subordinate regulations should follow, not pre-empt this process.

Many of the problems and anomalies discussed here arise because the Bill and, even more so, the subordinate legislation has imported concepts and provisions from the existing planning system without appropriate scrutiny. They also make many untested presumptions about the new Territory Plan continuing along the same lines as at present.

There is no obvious reason why the Planning Act and, especially, the subordinate regulations, need to be legislated in such detail in advance of the Territory Plan. A much more efficient, high quality and more resilient planning system could be achieved if this Bill and the new Territory Planning Bill were developed in conjunction with each other with the detailed subordinate regulations following from a joint consideration of both.

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