

To  
Environment, Planning and Sustainable Development Directorate  
GPO Box 158  
Canberra City ACT 2601

Date  
15.06.2022

Subject  
Submission regarding the draft Planning Bill 2022

1

To whom it may concern,

The purpose of this letter is to outline Molonglo's comments regarding the draft Planning Bill 2022 (the Bill).

As a general note, Molonglo supports the positive intentions of the Bill. The move towards an outcomes focussed Territory Plan is an opportunity to redefine development standards and expectations for Canberra.

The following submission identifies some critical elements that are currently missing from the Bill.

### **Outcomes focus and Consultation**

The *Planning Bill - Policy Overview March 2022* notes that the planning authority will be "more descriptive of what good planning outcomes are, and what the desired outcomes for an area are". There is a clear opportunity for connection here between the Bill, the Planning Strategy and District Strategies, and the new Territory Plan. However, Molonglo is unaware of any examples of good planning outcomes to which the planning authority would be aligned.

Section 10 of the Bill allows the Minister to make guidelines about principles of good consultation. The same discretion should be applied to guidelines about good planning outcomes. Other jurisdictions in Australia, such as NSW and Victoria, have apartment design guides, for example. They establish essential and desirable characteristics focussed on high quality design outcomes, and could form a basis for similar reference documents for the ACT. Importantly, the creation of any guidelines about good planning outcomes should be separate from design principles for the design review panel (Section 96).

The absence of any description as to what constitutes both good planning outcomes and the principles of good consultation is arguably the greatest shortcoming of the Bill as presented. It is Molonglo's view that good consultation, through early and proactive community participation in the planning process, is inextricably linked with the delivery of good outcomes. Good outcomes will vary from place within the city, as each community (and indeed each place) has subtly unique characteristics and aspirations, and faces different challenges. This can only be established through early proactive stakeholder engagement to shape the design brief.

### **Outcomes focus - Incentives for innovation.**

Outcomes focus could also incentivise developers to innovate. For example, maximum building height controls typically apply to all land in a particular zone, regardless of location, or to individual sections in a town or group centre. If the Precinct Code/District Strategy identifies walkability, pedestrian amenity and active frontages as a desired outcome, then the new Territory Plan should enable opportunities for increased building height in exchange for improved ground level permeability and publicly accessible amenities that may increase pedestrian activity and overall commercial activity in the area. The developer could be compensated for the loss of ground floor gross floor area by allowing an equivalent increase in the height of the building. Similarly, for residential development, additional height could be negotiated where it is demonstrated that substantial site open space and tree coverage can be achieved.

Molonglo has successfully negotiated higher building heights in this way on our project in Collingwood, Victoria. By following the standard controls for commercial buildings in the area, we would have delivered a blocky 4 storey podium with no setback to the verge, with a tower atop at an increased setback. Instead, by conducting a proactive public participation program we were able to establish the particular outcomes that were desired for that place. This informed the design brief and we drew the support of all stakeholders - community and regulators - to achieve an alternative outcome that provided increased pedestrian amenity at the ground plane and through a vertical laneway that connects between each level of a two tower development. The loss of floor space at ground and through the vertical laneway was compensated

**MOLONGLO**

hello@molonglo.com +61 2 6171 8400  
GPO Box 1565 Canberra, Ngunnawal Country, ACT 2601 molonglo.com

with additional height, but the overall gross floor area of the building was no greater than if the building was designed to comply with the standard controls (i.e. compliance with the floor space ratio). The overall outcome will provide a striking point of architectural difference in comparison to general office buildings in the surrounding area. Simply put the outcome was not more - it was *better*.

### **Outcomes focus - Incentives for community participation**

At present the Bill contains no encouragement for early and proactive community participation in the planning process. This means that when it comes to the formal development assessment process, a Proponent who engages in early and effective community participation and who can show that the proposed development outcomes enjoys widespread community support, is treated no better than a Proponent who has undertaken tokenistic pre-consultation. Indeed, even this minimal level of engagement is proposed to be dispensed with under the Bill.

We suggest that the interests of Canberra would be better served by instead including provisions which encouraged and rewarded best practice community participation and the delivery of the agreed outcomes for the community within which the proposed development would sit. Such provisions might usefully include:

- Priority for Design Review Panel consideration where that is required;
- A streamlined assessment process with a dedicated EPSDD case officer to co-ordinate and manage referral agency comments and ensure that agencies acknowledge the desired outcomes; and
- Exemption from third party ACAT review. Such exemptions are commonly accorded to town centres and precincts such Kingston Foreshore and the University of Canberra which have been the subject of prior consultation processes resulting in precinct master plans.

We note that Territory Priority Projects (TPPs) are exempt from third party ACAT review under the new Bill. The requirement to demonstrate 'sufficient community consultation' in order to be declared as such by the Minister should be critical to justifying such an exemption. However, we suggest that TPPs should not simply be 'sufficient'; they should demonstrate best practice community participation.

### **Matters exempt from third party ACAT review**

We raise TPPs above to highlight the link between community support for a proposal and the opportunity to expand third party ACAT review exemptions.

More broadly, the Bill provides an opportunity to consider the physical areas exempt from third party ACAT review. Molonglo recommends the area of Kingston Foreshore currently exempt be amended to incorporate the East Lake urban renewal area, including the Dairy Road site.

Expanding the area of exemption should be tied directly to extensive, ongoing community engagement and participation, and a community-supported statement of development intentions. Molonglo has demonstrated this during the rezoning of Dairy Road and is currently undertaking pre-consultation for the Dairy Road estate development plan. We are committed to meaningful engagement throughout the redevelopment process. Similarly, the ACT Government has the opportunity to demonstrate best practice community participation with its East Lake Place Plan project.

It is appropriate that areas of substantial renewal benefit from third party ACAT review exemptions, much as Kingston Foreshore benefited during its renewal process. Linking exemptions to community participation ensures transparency is front loaded into the development process.

### **Opportunities for private developer initiated territory priority projects**

While Section 211 of the Planning Bill provides the definition of TPP, it is unclear how this process would apply to any project, privately initiated or otherwise. Does it require a formal request to the minister, or will the minister simply direct the planning and land authority, as per the call-in powers under the current *Planning and Development Act 2007*?

The threshold for a TPP appears high, as a project must satisfy all items under section 211(1)(a) through (d). The reference to 'critical public infrastructure or facilities' in 211(1)(b) is essential to whether privately initiated development could be considered a TPP, and could be interpreted two ways. Is the term 'public' intended to apply to infrastructure only, or facilities as well. Public infrastructure can be understood in common language as infrastructure initiated by and delivered by or on behalf of a municipal government (e.g. roads, bridges, rail). Public facilities, on the other hand, may be buildings and projects that could be

initiated by a municipal government, but could equally be understood to be a socially desirable outcome provided to the public by a private developer (e.g. affordable housing, public realm, cultural facilities, sporting facilities, shopping centres, private hospitals).

EPSDD should clarify the intent of section 211(1)(b) and whether 'public infrastructure' and 'public facilities' are meant to be separate or singular terms. More broadly, EPSDD should clarify whether developer initiated projects can be considered TPPs and therefore how 211(1)(b) can be satisfied.

**Relationship between strategies, planning controls, desired outcomes and engineering standards.**

While it is often thought that planning controls (setbacks, site coverage, solar access) will dictate the design of a building, in reality the relatively narrow sectional interests of utilities and service providers have a wholly disproportionate influence on urban environments. The desired "outcome" of utilities and service providers is the lowest possible ongoing costs and their standard requirements reflect this. This objective is often at odds with the desired planning and urban design outcomes of Place Plans, Master Plans or the Territory Plan. However the objectives of the Plan rarely prevail.

For example, accommodating TCCS standards for waste vehicles is currently the most predominant influence. Waste collection tenders and contracts universally specify large vehicles as this delivers economies of scale.

Accommodating on-site waste collection, and the associated requirements for impervious surfaces for waste vehicle manoeuvring, compromises opportunities for site open space and green infrastructure. This is particularly true for residential development where kerbside collection is not an option and commercial sites with only one crossover. Means to reduce manoeuvring areas, such as vehicle turntables, are extremely costly and lead to developers increasing unit sale prices as a result. Simply put, undesirable urban environments, which last for many generations, are being designed to accommodate large waste collection vehicles, rather than service providers being obliged to utilise vehicles which can operate within the urban environments we desire.

The ACT Planning Strategy 2018 established the clear ambition of 70% of new residential development to be delivered by urban infill. To enable this, TCCS municipal standards must change, consideration should be given to loading zone style waste collection from a public road, and smaller waste vehicles must be introduced for urban intensification areas.

EPSDD should use the new Planning Bill and subsequent new Planning Strategy to align conflicting codes and municipal standards. Much as the Territory Plan must be 'not inconsistent' with the National Capital Plan, so too should TCCS and other agencies standards be not inconsistent with the Planning Strategy and District Plans. This should be enabled by the new Planning Bill.

**Conclusion**

Molonglo commends EPSDD for the substantial undertaking that is the ACT Planning System Review and Reform Project. We look forward to reviewing the revised Bill and any future opportunities to engage in consultation on other aspects of the Project.

If you have any questions about this submission please do not hesitate to contact Will Pearson on [will@molonglo.com](mailto:will@molonglo.com) or phone 0401 574 366.

Yours sincerely

DocuSigned by:  
  
F8966166F8C14C4...  
Nikos Kalogeropoulos  
Director  
Molonglo