

Submission on Draft Planning Bill Ian Hubbard

Thank you for this opportunity to make comment on the draft Planning Bill, which is the first document in a suite of documents that make up the Planning Framework.

This process seeking input from the community and industry is hamstrung by not providing drafts of the other components of the new Planning System, including the Territory Plan, the District Plans and consultation processes. Considering the length of time that the system has been under review it was reasonable to expect that some detailed drafts of these documents would have been made available to assist discussion.

I have been to a number of the presentations by the Planning Authority, Community Associations and read the key documents provided. Most of the documents available are glossy summaries in the form of pamphlets and brochures. Big on graphics and light on substance. What is missing is the certainty that flows from the links between the Planning Bill, the Territory Plan and the guidelines and regulations that support that operation of the legislative framework.

The Minister and the Planning Authority has missed an opportunity to build trust by not providing the complete set of documents to support genuine engagement. One document at a time does not enable analysis of the system as a whole and is time wasting for the people interested in ACT planning. This is like a new car being presented for sale but you're only allowed to see the outside. You can't see inside or under the bonnet. There is an implied proposition behind the engagement and consultation that the community can trust the Planning Authority because ... 'We have the community's best interest at heart'. The process has raised far more questions than answers provided.

I am relatively new to the operational vagaries of the current ACT Planning System but I was surprised by the lack of trust in the planning system and those who manage it on behalf of the community. Most commentators freely admit that the operations of the planning system is heavily weighted toward the proponent. That the assessment and decision-making processes is not a level playing field. I have often heard said that the ACT Planning Authority has been 'captured' by the proponents of developments and their teams of development experts. There is a question whether this broadly shared belief is justified. If it is justified, and the communities engagement in planning decisions are important, how does this new planning framework ensure that there is a better balance between community and the proponent of a development? It would be informative to see an annual analysis of the number of development applications where representations are made by the community and others, the major issues raised, whether these issues were resolved or argued against by the Planning Authority, how many approvals many decisions were appealed and by proponent or the community.

Primacy of the resident in planning for the community

For many reasons the resident is the most important stakeholder in planning. Of all the members of the community that are affected by planning the vast majority are the residents. They live in the resulting built environment. In the end, as tax payers, rate payers, voters and purchasers of all goods and services residents also fund the entire development of Canberra.

The Minister and Planning Authority need to highlight in the new framework how it will contribute to and reflect the community's interests in planning. How, in particular, the residential, environmental and community spaces will be protected and developed in the best interests and wellbeing of the community. That simple principle of 'do no harm' should be one of the guiding

principles. Enabling the view of the community to be expressed, listened to and acted on in development decisions needs to be enhanced.

In all the grand talk of the new planning framework being 'outcomes focused' it is easy to overlook the primacy of the interests of the residents and community.

The Draft Planning Bill

The draft Planning Bill sets out the priorities in the legislation in the new object that almost states that central person in the planning framework is the resident and provides a scheme for community participation'. Any detail of how the 'well-being' of the resident is ensured or how community participation will work is left for later

The new object in the draft Planning Bill amongst other things has

7 Object of Act (1) The object of this Act is to support and enhance the Territory's liveability and prosperity, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system that—

(a) is outcomes-focussed; and

(b) promotes and facilitates ecologically sustainable development that is consistent with planning strategies and policies; and

(c) provides a scheme for community participation. *Page 5*

S7 (2) (f) provide for community participation in relation to the development of planning strategies and policies, and development assessment. Page 6

S10 Principles of good consultation

(1) The Minister may make guidelines about principles of good consultation and how the principles are to be implemented.

(2) A person required to carry out consultation under this Act must take the guidelines into consideration when carrying out the consultation.

(3) A guideline is a notifiable instrument. Page 12

PRE-DA COMMUNITY CONSULTATION

An important feature of good consultation is early notification and provision of full information regarding a development. Removing the requirement for pre-lodgement consultation is a backward step. The rationale for the removal of this consultation is an indication of how poor the attempt at community engagement is under the current framework.

Pre-DA consultation is proposed for removal because, on balance, it is not considered to add value to the development process beyond the early notification of a proposal and identification of issues of contention, which often remain issues of contention during the DA assessment.

The costs to the proponent, time delays in bringing product to market, and furthering the adversarial relationship between the community and proponents are considered to be much greater burdens than the limited benefit of early identification of issues and the potential of achieving a 'social licence' for development, which often does not occur as varying views are often held by community members. While pre-DA consultation is proposed to be removed, there will be significant

improvements to the transparency of processes throughout the Planning Bill. These include application documents for Territory Plan amendments and DA processes being proactively published on the planning website, and improvements to strategic and spatial planning processes, through district strategies, to provide greater clarity about how areas may change and evolve in the future.

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This is a clear indication that the new Planning Bill tilts the balance even further towards a proponent. There are proponents who conduct genuine consultation and engagement that is beneficial to the community and the development. There are other proponents who have no interest in consultation and are adversarial from the beginning because they know that their project will have a significant negative impact on the community. Experienced participants in the planning process can see from the outset which projects will be controversial. This is a small percentage of all development applications. Some proponents chose to ignore obvious impacts on neighbours or the broader community because they own the land and should be able to do whatever they like. Their holy grail would be to remove any opportunity for third party consultation or appeal. Effectively avoid all scrutiny of developments and decision-making. That's real streamlining.

The pre-DA notification is an important part of notifying neighbours and the community of a proposed development. This process should be improved and enhanced. The notion that all the costs are borne by the proponent shows the biased view. To engage in the decision-making process community members face significant costs in time and money. The documentation is often complex and requires the assistance of experts which are beyond the reach of most community members and councils. The costs associated with an ACT Appeals tribunal process are prohibitive. Resource support needs to be provided to community in a similar way to legal aid.

The Planning Framework needs to recognise the different motivations of the proponent and the community representatives in the assessment of a development. Generally proponents are undertaking developments to make money and design a project to maximise profit. That's the business they're in. Community members engaged in the planning process are motivated to take a stand against the negative impacts of the proposed development and the wellbeing of the community. Proponents describe community members in far less flattering terms.

The comments in the Policy Overview above focus on the costs to the proponent and the delays of bringing the product to market. This completely ignores the power imbalance between the proponent and community members. The proponents are paid to deliver the project, have access to significant financial resources and teams of experts including town planners, legal skills, architects, engineers, communication and media skills. There are teams of experts that are engaged by proponents because they are good at getting projects through the planning system. Community representatives on the other hand have virtually no resources, contribute their time on a voluntary basis and have limited access to experts. There is little wonder that these community members feel like they've been run over by a bus during planning processes. Community members question whether participation in the planning process is good for their health and wellbeing. The rewards for participation in the process between the proponents and the community representatives could not be starker. On this playing field there is no contest.

In addition, the current and draft development application processes enable the proponent and planning authority staff to form strong working relationships over months and years. For a particular development proposal they might exchange documents and have conversations around proposals for a number of years. They give each suggestions on how the proposal would satisfy the

planning rules. On occasion they share advice on how rules can be interpreted or made more flexible to enable a proposal to be approved. The planning authority provides these clients with excellent customer service and looks at ways of streamlining the process to make it more efficient for the proponents. This could be seen as 'capture' of the Planning Authority by proponents where developments are approved that do not meet the planning rules.

If the Government was genuine about the community participating in planning decision-making they would put measures in place to level the playing field. They would provide excellent customer service to community representatives in the planning decision-making process. They would look at ways to enable and empower the community in participation. This would include the requirement to provide information regarding a development as early as possible – pre-DA. Providing sufficient time for the community to properly analyse all the documentation provided. Resourced to get access to relevant expert skills to assist this analysis. An example of this support is the provision of legal aid.

Government consistently underestimates the time needed for community members to participate in consultation and decision-making processes. Most have a fulltime job and other responsibilities. There has been some acknowledgement of this recently with community members being remunerated for their participation. Government needs to significantly increase the funds and other resources available to community councils if they are to be effective in the consultation process. This would enhance the quality and diversity of engagement.

If the object of the planning framework is the '**well-being of residents**' it is important that they are not effectively excluded from the decision-making process. The current situation where the only consultation with the residents is the 15 day notification period once the development application is lodged is grossly inadequate for the reasons outlined above. This process will not enable the objects of the legislation to meet.

Transparency

The moves to increased transparency is applauded. The availability of early, complete and comprehensive information is fundamental to consultation and engagement. The Planning Alerts platform is a fantastic tool which enables the user to apply a range of filters to suit their needs. The Authority's website should incorporate these features.

The Planning Bill introduces several new requirements for advice, decisions and information to be published on the Authority's website. Examples of what must be published under the Bill include:

- *development applications*
- *requests for further information*
- *further information provided*
- *applications to amend a development application*
- *notice extending period of public notification*
- *decision to waive further entity referral or public notification requirements, with reasons*
- *any pre-decision advice*
- *notices of decision*
- *applications for reconsideration.*

The Authority's website is proposed to become a central source of information on planning matters. The publication of these applications, decisions and notices on the website will mean that community

and industry members can go to a single website to access all the information they need about planning in the Territory.

Implementation work on the website to increase usability and accessibility is planned.

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The addition of this information being archived on the website is a valuable resource for many reasons. The proposed direct links between the development applications and the appeals processes would also enrich use the information.

As part of the enhancing of community engagement and customer service provided by the planning authority it would be valuable to be able to make enquiries online, ask for expert opinion and seek advice regarding planning matters and particular development proposals. This could be provided as a searchable resource and again linked to specific development applications. The more interactive the system is the more valuable it will be.

Other Concerns

I do have concerns about the potential for proponents to initiate changes to the Territory Plan. The processes outlined have an unworkable opportunity for public consultation. Will the community organisations have an equivalent opportunity to initiate changes to the Territory Plan?

The draft Bill provides a number of increases in the powers of the Chief Territory Planner to reduce scrutiny or opportunities for review. Such as the ability to make minor changes to the Territory Plan. More work needs to be done on these changes.

Some Comfort

While there is some comfort provided by no changes to the rules for RZ1 residential zones it is still 'a wait and see proposition' until the draft Territory Plan is provided. I am trusting that you have the 'best interests of the community at heart

Will the Bill remove key planning rules for residential areas?

No, we won't be doing away with all the rules we already have to control development. Throughout the project we have maintained that the planning system must protect the characteristics of our city that we value.

For example, this means keeping the low-density nature of RZ1 areas (including development controls such as building heights and zoning), protecting areas of environmental value, and social and community facilities.

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Finally to deliver all of the outcomes sought by the proposed new Bill and Planning Framework there will need to be an increase in resources to make sure all the actions contained in the documents can be adequately implemented. There are certainly not enough skilled employees or resources in the Authority at present to deliver planning framework as proposed.