

Submission on the draft Planning Bill 2022

Leon Arundell

Overview

In 2007 the Planning Minister said that we needed a new planning system because, “[People using the ACT’s current planning system have found some aspects slow, cumbersome, inconsistent and confusing.](#)”

The new planning system had thirty-eight codes and twenty-three zones.

In 2011 Ben Ponton [created sixty new codes.](#)

In 2012 [Ponton unilaterally authorised Precinct Maps to over-ride provisions in Zone Development Tables for Residential, Commercial, and other Zones, and created 127 new Precinct Maps.](#) He now claims that he merely relocated provisions within the Territory Plan.

[In 2018 Ponton became the ACT’s Chief Planner, saying that he would pursue a citizen focus.](#)

In 2019 Ponton shut down the government-community Environment and Planning consultative Forum.

In 2021 the Planning Minister said that we need a new planning system because, “[The current legislation has grown complex and cumbersome as changes have been added to it in a piecemeal way.](#)”

Ponton has prepared a Planning Bill that:

- allows detrimental development proposals to be Territory Priority Projects;
- automatically deems trivial development proposals to be Territory Priority Projects;
- retains a loophole that allows the planning authority to unilaterally make Major Amendments to the Territory Plan; and
- fails to control the proliferation of potentially conflicting “Precinct Maps” that define additional variations of planning zones.

Allows detrimental development proposals to be Territory Priority Projects

Section 212 authorises the Minister to declare a development proposal that on the basis that, even if its detriments significantly outweigh its benefits, the Minister is satisfied that its benefits are significant.

- For example, re-zoning the roadway of Northbourne Avenue from *Transport and Services* to *Residential* would have significant benefits, because it would make ten hectares of valuable inner-city land available for residential use.
 - It would also have significant detriments, because it would make it difficult for people to travel between Civic and north Canberra.
- This problem can be addressed by requiring the Minister to be satisfied that the project offered “significant net benefits.”

Trivial development proposals automatically become *Territory Priority Projects*

Section 210 defines any project (however trivial) that is “*related to light rail*” to automatically be a Territory Priority project, irrespective of whether or not it has been declared to be a territory priority project.

Section 211 defines a project to be “*related to light rail*” (and hence to be a Territory Priority Project), if “*the development to which the proposal relates may facilitate the construction, ongoing operation and maintenance, repairs, refurbishment, relocation or replacement of ... infrastructure within, or partly within, 1km from ... existing light rail track; or light rail track identified in a development proposal.*”

- That includes trivial projects for construction or refurbishment of infrastructure, including ordinary private dwellings and local footpaths, that happens to be within 1 kilometre of an actual or proposed light rail track.

Retains a loophole that allows the planning authority to unilaterally make *Major Amendments to the Territory Plan*

Section 83 allows the territory planning authority to make a Major Plan Amendment using the “*minor plan amendment*” process, simply by being “*satisfied*” that the amendment would be a minor plan amendment. Section 83 does not require the planning authority to be able to demonstrate that the amendment satisfies the criteria in Section 82: *What is a minor plan amendment and is consultation needed?*

This is the loophole that Ben Ponton used in Notifiable Instrument [NI2012-622](#). [Section 89](#) of the Planning and Development Act allowed him to use the “Technical Amendment” process (the current equivalent of a proposed “minor amendment” process) to make Territory Plan Variations that did not satisfy the Technical Amendment criteria of [Section 87](#). The non-compliant changes included creation of a new Precinct Code, authorising “Precinct Maps” to over-ride provisions in development tables, and creation of 127 new Precinct Maps.

By making an amendment as a “*minor plan amendment*,” the territory planning authority can bypass the requirements to give the amendment to the Minister (Section 64), for the Minister to refer the amendment to the relevant Assembly committee (Section 68), and to present the amendment to the Assembly (Section 75).

Fails to control the proliferation of potentially conflicting “*Precinct Maps*” that define additional variations of planning zones

Precinct Maps are currently authorised to over-ride provisions in Development Tables for the Territory Plan’s Residential, Commercial, Industrial, Community Facility, Parks and recreation, Transport and services and Non-urban Zones.

Part 1.73 of Schedule 1 of the draft *Planning (Exempt Development) Regulation 2022* would also authorise Precinct Maps to define *plantation forestry areas*.

Creation of Precinct Maps is not controlled in in the existing Act or Regulations, in the draft Bill, in the accompanying draft Regulations.

The planning authority used a Technical Amendment (Notifiable Instrument [NI2012-622](#)) to authorise Precinct Maps to over-ride provisions in Zone Development Tables, and to create 127 Precinct Codes.

That set a precedent for the territory planning authority to use “*minor plan amendments*” to amend the authorities of Precinct Maps, and to create new Precinct Maps, without giving those amendment to the Minister (Section 64), without the Minister referring the amendments to the relevant Assembly committee (Section 68), and without presenting the amendments to the Assembly (Section 75).

There are currently 134 Precinct Maps. Suburbs are subject to up to three Precinct Maps, which may have inconsistent requirements.

Section 115 of the current Act clarifies which Precinct Code applies, in cases where the requirements of two or more Precinct Codes are inconsistent. It does not address the issue of inconsistent Precinct Map requirements. Neither the draft Bill nor the draft Regulations address the problem of inconsistent Precinct Map requirements

When requirements in Precinct Maps are inconsistent, the only way to resolve the inconsistency will be through the courts.