



Belconnen Community Council

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PO Box 1131 Belconnen ACT 2617

www.belcouncil.org.au

ABN 47 379 243 769

Belconnen Community Council: ACT Planning Review 2022 Submission

Belconnen Community Council is a not for profit, government-funded community advocacy group who represent the interests of our members and the community to the ACT Government on a range of matters affecting people who live, work and play in the Belconnen District.

As the voice of Belconnen for over two decades, and with over 100,000 people in our catchment, we are intimately engaged with processes both good and bad, and uniquely positioned to offer observations on what works for all sides of the channels we engage with.

Key principles for future decision making

- Integrity of process, consistency and confidence with clarity of purpose – the community expects that the Government of the Day and its Directorates will provide the district strategy documents and a revised draft Territory Plan for public scrutiny before the final stages of formalising the Bill. Canberra Planning Action Group's (CPAG) recommendation to "improve the current Territory Plan rather than starting again" is supported by BCC; there is no value in starting from scratch as the requirements for better compliance and outcomes based on stringent principles and guidelines already exist.
- Establishing panels to strengthen trust, transparency and decision making – the Assembly has a role to play in many of the matters being dealt with from a non-technical perspective and we encourage MLAs to use the expertise in their offices to assist with transparency in particular. We agree with CPAG on "minimising Ministerial 'guidelines' and regulations with limited public input; take decision-making on non-minor DAs away from the planning authority (e.g. NSW Local Planning Panels)". This appears to be a sensible way to examine, review and promote trust in process.
- Consultation is the key to community participation and confidence – enshrining good pre-DA and DA consultation principles in the legislation and we support the introduction of Community Participation Plans.

Background:

The ACT Planning System Review and Reform project has been underway for some years now with various expectations being expressed by stakeholders. The intention by government is to replace the current Planning and Development Act 2007 (P&D Act) with a bill that incorporates the review principles and outcomes. A new Territory Plan will complement the review process.

The ACT planning system was previously reviewed between 2002 and 2006 (after Labor won government in 2001): this created the P&D Act 2007 and the Territory Plan 2008. We note in the CPAG paper that: *"..there were also significant (regrettable) 'governance' changes with the removal of:*

- *The Commissioner for Land and Planning (an independent expert planner with a small staff who determined significant DAs); and*



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- *Local Area Planning Advisory Committees (which reviewed planning policy matters and commented on development proposals)*

There appears to be very little difference between the current Act and the proposed Bill by way of design and operation. We agree with the CPAG that the new Territory Plan will produce something strikingly different from the current model *“which already features ‘performance-based’ codes, with ‘rules’ (few of which are mandatory) and ‘criteria’ for considering departures from rules.”*

We similarly agree with CPAG, that attempts to evaluate this sort of performance-based approach are scarce and the paper authored *“by Jennifer Roughan in 2016 on Performance Based Planning in Queensland which concluded:*

In addition to complaints of complexity and a lack of efficiency, there are increasing signals from communities (and elected representatives) that there is confusion, a lack of confidence and, possibly, a sense of injustice. These issues arise from a lack of certainty, inconsistent decision making and (at least perceived) lack of transparency. Rather than unleashing innovation and rewarding best practice, the system is more frequently grappling with whether development is “good enough” to pass performance outcomes which occur at various levels in a planning instrument and are often unclear and capable of multiple interpretations.”

We will rely on the work of CPAG for the next part of our submission.

As a major part of its consultation program on the ACT Planning System Review and Reform project the planning authority ran four ‘stakeholder’ meetings last year with representatives of community groups, the development industry, professional bodies and others such as the Conservation Council, ACTCOSS, etc. The ACT Planning Review and Reform Working Series Listening report 17 December 2021 identified three ‘key feedback themes’, which were said to be ‘consistently prominent’ across the four ‘stakeholder’ meetings:

1. “Confidence, certainty and clarity” – “important to both community and industry”, “Clear rules and processes are preferred”

2. “Trust and transparency” – “Building trust in the planning system should be a priority”, “Transparency across the planning system, including decision making, was valued by all participants”

3. “Consultation” – “Community consultation is an important aspect of restoring trust in planning system”

Consistent with these key themes are community concerns such as:

- *Lack of transparency and accountability in decision-making*
- *Lack of opportunities for effective community participation*
- *Poorly worded and over-complex planning controls*
- *Lack of effective scrutiny of the planning authority by the Legislative Assembly*



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- *Poor quality of development outcomes (knock-down-rebuilds, 'demonstration housing' schemes; over-dense residential flat buildings, loss of mature trees, etc)*
- *Lack of effective compliance with planning decisions"*

Issues:

We prefer the CPAG comments to illustrate the community's concerns when it comes to the new Bill and Plan models:

1. GOVERNANCE

(Structure and processes for decision making, accountability):

Good governance arrangements are critical to building TRUST in the planning system and TRANSPARENCY in decision-making.

The Territory Planning authority seems to be unique in Australia in its wide range of powers all vested in one individual – the 'chief planner', who is also the CEO of a complex 'directorate' (government department). There is a relatively small, single chamber parliament and no local government. The government ministers form the 'Executive'.

In stark contrast, NSW and SA have:

- *Two houses of parliament with several committees*
- *The planning ministry and department*
- *An independent State Planning Commission (with commissioners and a chief executive) – which sets the planning 'rules' and deals with State significant development*
- *Local councils – have some planning and assessment roles*
- *Regional and local planning boards and/or assessment panels (independent predominantly 'expert' panels for more significant and/or controversial development)*

Khalid Ahmed, Adjunct Professor, Institute of Governance and Policy Analysis, University of Canberra, says:

The Draft Planning Bill incorporates significant changes to the governance of the planning system in the Territory. In particular, it:

- *Degrades the role and powers of the Legislative Assembly for oversight and input to key planning instruments;*



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- *Provides unspecified discretionary powers to the Minister to make planning instruments and directives, and to make rules for community input;*
- *Increases the powers and discretionary authority of the Chief Planning Executive; and*
- *Diminishes the role of the community in planning decisions.*

2. COMMUNITY PARTICIPATION/ENGAGEMENT

The Bill (s.10) has a heading: 'Principles of good consultation', but what these are is left to the Minister who 'may make guidelines'. The Bill also removes the current requirement for 'Pre-DA Community Consultation' (apparently because it wasn't working very well – so fix it, don't just abandon it)!

NSW has mandatory community participation requirements, including:

- *Community participation plans which must have regard to eight listed matters or principles; these plans are published on NSW planning portal*

In SA there must be a Community Engagement Charter based on six principles. [See Appendix for consultation principles]

The Community Engagement Charter is prepared by the State Planning Commission, put on the SA planning portal with an invitation for representations, reported on to the Minister who refers it to a parliamentary committee who may suggest amendments – either House may then disallow.

Contrast this with the draft Bill: "The Minister may make guidelines".

This is not good enough. The Bill needs to clearly set out the principles for community engagement, as well as requirements for Community participation plans.

3. PLANNING POLICY MAKING

The proposed main planning 'instruments' in the ACT planning system are:

- *the planning strategy – made by the Executive (presumably on advice of the planning authority), subject to unspecified 'public consultation' – NO apparent role for Legislative Assembly*
- *district strategy – may be made by the Executive, also subject to unspecified 'public consultation' – NO apparent role for Legislative Assembly or for district community councils*
- *statement of planning priorities – may be given by the Minister to the planning authority*
- *estate development plans – 'approved under a development application'; relevant provisions to be incorporated in the Territory Plan*



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• *Territory Plan – planning authority must give the ‘draft Territory Plan’ (presumably a ‘new’ plan, under the new Act), together with a report on ‘consultation’, to the Executive for making. The Executive notifies the Territory Plan, which does not commence until ‘approved’ by the Legislative Assembly (s.50). There is little description of the content of the Territory Plan, unlike the current P&D Act which requires:*

a) a statement of strategic directions;

b) objectives for each zone;

c) development tables (uses permitted or prohibited etc in each zone);

d) codes (rules and criteria for development assessment).

Under the Bill, the Territory Plan is to set out “the policy outcomes to be achieved by the plan; and requirements and outcomes against which development proposals are assessed.” Nothing about content and format of Codes, or even whether there will be Codes.

This all seems to be designed to give the planning authority enormous discretion in dealing with development proposals, and to limit the ability of the community to comment in relation to compliance with rules, criteria etc.

Also, why is there such limited involvement of the Legislative Assembly and, potentially, district Community Councils?

4. DEVELOPMENT ASSESSMENT AND CONSENT

In NSW and SA the different types of development are to be spelled out in planning instruments. Under the draft Bill ‘prohibited’ and ‘exempt’ development is left to regulations (requiring no public consultation).

Development requiring an environmental impact statement (EIS) will also be prescribed by regulation or ‘declared’ by the Minister (s.102), rather than listed as ‘Impact’ track development under the Territory Plan. The Territory Planning authority of course also runs the EIS process.

The draft Bill and Regulations regarding environmental assessment take out the process of EIS exemption which at present requires public notification and introduce Environmental Significance Opinions, not requiring public input. Publicly notified Strategic Environmental Assessments are also deleted.

A development application for a territory priority project must be decided by the chief planner (s.180). No role for the Minister or the Legislative Assembly or an independent assessment panel as per NSW and SA. Even the Minister’s ‘call-in’ powers are omitted from the Bill.

NSW and SA have independent, expert regional and local planning (assessment) panels as ‘consent authorities’ for most development proposals.



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Local planning panels (NSW) are composed of three 'approved independent' members with 'relevant expertise' plus one representative of the local community. They are even required to conduct their meetings in public!

Something equivalent to this is necessary in the ACT! (Note that the Minister may appoint an Inquiry Panel on an EIS – this may be a potential model for Local planning panels, but criteria for them need to be in the Bill.)

The decision-maker is required (s.181) to consider: "(a) any applicable desired outcomes in the Territory Plan". No mention of any Rules, Criteria, zoning objectives, other policies. Just 'applicable desired outcomes'. How can the community, the ACAT, or even an applicant, deal with this?

The decision-maker can give development approval contrary to entity advice (Heritage Council, Conservator, etc) if "satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved." (s.185)

And, in respect of a matter 'protected by the Commonwealth', "if the Commonwealth Minister does not give the decision-maker advice about the proposed decision within 10 working days...the decision-maker may approve the application."

The decision-maker can also review, amend or correct its decisions.

All this seems to be designed to give the 'decision-maker', ie. the planning authority, enormous discretion in dealing with development proposals, to limit the ability of the community to comment in relation to compliance with rules, criteria etc., and to ignore the requirements of other government agencies including those of the Commonwealth!

How can this be acceptable?

Conclusion:

The Belconnen Community Council believes that substantially, the submission put forward by CPAG matches and echoes community concerns across our district and should be a key document for consultation and consideration going forward.

Recommendations:

The Belconnen Community Council strongly recommends that the Minister retain their call in powers, but that should be a last resort when all other options have been exhausted. Divesting a Minister of key powers and responsibility, accountability and transparency in decision making to a bureaucrat is not in the public interest.

What we would prefer to see is a panel made up of subject matter experts formed to make recommendations on Development Applications to the Minister for their consideration and action from a call in perspective. Expedience should never be a criteria for recommendation; it should always be about compliance with well-defined principles and community expectations.



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To that end, we recommend one SME panel position be made available to a community advocate who can liaise with Community Councils or similar community based groups (as well as individuals) where controversial or complex applications are considered. This will provide the level of assurance communities are looking for and divert the need for the Chief Planner to be the sole repository of opinion or influence.

We must have a Planning Act and Territory Plan that reflects community standards and expectation, otherwise we will continue to experience the delays shunted onto the West Belconnen community around the Kippax expansion. The flexibilities within the current structures are few and must be addressed through proper consultation and inclusion of key stakeholders if we are to have a resilient system.

The Belconnen Community Council stands ready to provide any assistance necessary to bring this process to a decent and reasonable conclusion.

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