

Submission on the draft Planning Bill

June 2022

Thank you for the opportunity to provide a submission on the draft Planning Bill. I make this submission in my capacity as a resident of the ACT living in the Inner North. I attended a district planning workshop last year and more recently attended several online sessions that related to the Planning Bill.

The draft Planning Bill consultation process

Despite my active engagement with the planning system reform, I still feel overwhelmed by the volume of information provided since consultation on the Planning Bill commenced. I note that as the various stages of planning reform progress, the way information is presented to community members needs to be reviewed.

If there is genuine interest from the ACT Government to give community members an opportunity to make informed and engaged comment, the methods recently employed fall short. For example, it is not entirely clear why district planning workshops were held when it will be many years before District Plans are developed. The workshop I attended was an exercise in guiding participants towards what the ACT Government wanted to hear – there was no opportunity at the workshop to tease out the issues that matter to residents of the inner North at all. Instead we were asked to comment on pre-determined statements that made assumptions about the needs and concerns of residents in our area. Further, the listening report sent out to participants following the session did not in any way reflect what was discussed on the night. I was left feeling as if the input of participants at the workshop was ignored and that the ACT Government was not interested in “listening” at all.

Stated intent of the Planning Bill

As a community member, passionate about liveability in the Inner North, I mostly support the stated principles of the Planning Bill as articulated in the Policy Overview Paper. In particular I support a planning system that is easy to use, gives certainty and flexibility (with appropriate controls in place).

I do, however, have significant concerns about whether the Planning Bill – as currently presented – is able to adequately address the principle of **transparency**. Underpinning these concerns is uncertainty about how the outcomes-focussed system will work in practice and the powers of decision-makers under the new Act.

Undermining community engagement by removal of pre-DA consultation

Increased transparency (as described in the Overview Paper) is “reflected through engagement with community at important stages of planning and communicating in a clear way” (page 10). However, public engagement, as articulated in the Planning Bill, seems to be focussed on making various documents available after the event (eg. publishing development application documents beyond the public notification period).

I am particularly concerned about removal of the pre-DA consultation process. Pre-DA consultation is an important process which represents true community engagement. It is a chance for community members and residents’ associations to be pre-warned about large

scale developments and have an opportunity to understand the potential impacts of a development. The DA public notification period is not an adequate period of time for community members to be able to respond meaningfully to a development proposal (even if 10 days is added to the consultation period). Once a DA is submitted it is too late for the developer to find out what the community thinks. Meaningful “engagement with the community” would see a requirement for developers to undertake participatory planning which involves community members early on in the planning process. Not after a DA is lodged.

Strong principles of community engagement need to be built into the planning system – not just a commitment to make a ‘guideline’ for consultation. The pre-DA submission process must to be restored to the planning system.

Powers granted to the Chief Planner as decision-maker

I am also concerned about how the principle of transparency can be upheld within the governance structure proposed by the Planning Bill. As the Overview Paper states: “transparency is a necessary feature to build trust and confidence in the planning system ...” (page 10). Sound governance arrangements are critical to building trust in planning and the community needs to have confidence in decision-makers. However, the Bill seems to be vesting power in one individual (the Chief Planner) and in the meantime degrading the powers of the elected members of the Legislative Assembly and diminishing the role of the community in planning decisions.

I am particularly concerned about the ability of the decision-maker to make a decision contrary to the advice of an entity (including provision for the Chief Planner, personally, to depart from Conservator advice on registered trees, declared sites and protected matters). This gives powers to one individual to over-ride entity advice on the basis of a “planning outcome”. Until the community is fully apprised of what a “planning outcome” actually means in practice it is not possible to have trust and confidence in the governance structure which seems to be absent of the checks and balances that are integral to upholding the separation of powers.

I would like to see an independent planning panel considered as part of this review of the planning system. Consideration of an additional/alternative development approval model, such as planning panels, should be very much in scope for the review and reform project (see page 8). The concentration of power in the Chief Planner does not build trust and confidence in the planning system.

Outcomes-focussed system

I support the assertion that a development should have a focus beyond compliance with individual prescriptive planning rules and consider how a development should perform in its site context. However, this does not mean that a removal of these rules is the answer. Mandatory provisions should apply to all aspects of a development – from solar access requirements through to height limits and setbacks. The outcomes-focus should be in addition to these rules – ensuring that a development fits with the desired outcomes for the neighbourhood (which will hopefully be articulated in the District Plans).

The proposed move to an outcomes-focussed system introduces too much discretion into the decision-making process. Without mandatory minimum standards it will be hard to get fair

and ethical decision-making. A rules-based system gives certainty at all levels of the planning system – a developer is clear on what is expected in a commercial zone and a homeowner can have confidence that their neighbour is restricted as to the height and size of a new house extension. Underpinning controls are integral to a planning system that the community can trust.

Territory and District Plans

As a final comment, I urge the ACT Government to make available the Territory Plan and District Plans prior to the passage of the Planning Bill through the Legislative Assembly. It is very difficult to understand and comprehend the impact of the Planning Bill if it came into effect without having an opportunity to engage with these important pieces of the planning puzzle.