

Submission on the Draft Planning Bill 2022

Submission by DE-IDENTIFIED BY EPSDD

I have had extensive experience of both supporting and opposing major aspects of the current planning system. This has included the master planning process, DA and pre-DA consultations, changes to the Territory Plan and ACAT processes. Overall I feel that the voice of the community is effectively irrelevant in decision-making that effects their everyday living over long periods of time. The sheer difficulty of meaningful engagement with the planning system plays a significant part in creating this feeling. Community trust in the existing system has been broken.

Consequently, this submission reflects the critical importance of community input and even more importantly the essential need for community trust. Trust will not be regained by a proposal for reform unless supported by:

- identification of undesirable outcomes from the current system and showing how they can be prevented by any proposed changes;
- substantially strengthening of transparency and accountability to the public in decision making; and,
- processes by which community submissions are treated with judicial care.

The current Review and Reform draft bill is not credible on these fronts. Accordingly it should be withdrawn pending a redraft, preferably carried out by a group at arms-length from the current planning bureaucracy.

This recommendation is further supported by the following comments.

Assessing effectiveness of change

Any proposed changes to the ACT's planning system must be assessed for their effectiveness in meeting the following critical outcomes for any planning and development policies and processes.

- Confidence and trust in the system
 - Consultation with the community is an essential component of establishing and maintaining confidence and trust
- Clarity of rules and processes
- Transparency especially in decision-making

The proposed changes proposed in the Draft Planning Bill will decrease clarity, transparency and consultation and hence community confidence and trust. Consequently, **the Draft Planning Bill fails on all these critical desired outcomes.**

When proposing changes to the ACT's planning system, the Government should provide concrete examples of problems with the existing system and how the proposed changes

would 'fix' these problems. The effectiveness of the system in meeting outcomes such as those in the preceding paragraph must be part of such an assessment..

Consulting with the community

Each community lives with its built environment and its local urban open space for many decades. They are critical components of the community's amenity and quality of life.

Developers have a much shorter time-frame than the community: they do not live with their development over decades. Many community members have lived in the places under consideration for ten or more years, and expect to continue living there for ten or twenty more. They take an experienced, long view. Consequently there must be meaningful consultation with the community at all stages of planning and development. Consultation about draft plans and pre-DA consultation are particularly important.

Any ACT planning bill must mandate consultation with the community at all stages of planning and development, specifically including consultation about draft plans and pre-DA consultation.

The following four principles for public consultation must be included in a revised ACT planning bill.

1. Consultation must be at a time when proposals are still at a formative stage.
2. Sufficient reasons must be put forward for any proposal to enable fully informed consideration and response.
3. Adequate time must be allowed for consideration and response.
4. The product of consultation must be conscientiously taken into account by decision maker(s).

Decision criteria: Rules and outcomes

The proposed bill replaces rules and criteria for assessing development applications with an 'outcomes-based' model. The outcomes listed in the proposed bill are very broad - wellbeing, health, recreation, housing and environment (transport and employment outcomes are added in another part of the document). Whole areas of quality of life influenced by planning and places are not mentioned: crime and personal safety and expectations of personal privacy, for example.

As it stands the Draft Bill is only machinery, dependent on description of outcomes and plans that are yet to be described. Without a view of the proposed new outcomes-focused Territory Plan the bill is a nearly empty framework.

The 'outcomes' in the Draft Bill are too vague and open to a broad range of interpretations. This would decrease clarity, certainty and confidence in the planning and development system, with a consequent decrease in trust and a decrease in the ability to write development proposals with clarity (against specific criteria) or certainty (that a reasonable case has been made on criteria).

Well designed rules simplify and clarify the planning, design and development process. They underpin essential outcomes for a planning system: clarity, certainty, confidence and trust. Until a new version of the Territory Plan which is written with an outcomes focus is available for exposure, or there is an extensive set of examples that show how outcomes will appear in the Plan, there is insufficient information to consider changing the decision making machinery that is aimed to work with the Territory Plan outcomes.

Rules are formulated with an outcome in mind. One possible shift to include outcomes in the ACT's planning system is to state the desired outcome(s) for each rule. If a developer wants to meet these outcomes in some other way then they should be able to make a proposal as part of their development application (in place of the current process of merit-track proposals aiming to satisfy the rules' criteria).

One reason given for removing rules from the planning legislation is that rules inhibit innovation. In practice, rules need not inhibit innovation. Imposition of new rules for environmental regulation have been known to stimulate innovation.

Decision-making

The proposed planning bill has vague decision-making criteria and concentrates decision-making power in one individual: the ACT chief planner, who also heads the Environment, Planning and Sustainable Development Directorate. This would decrease confidence, clarity, certainty, trust and transparency, which are all essential outcomes of an effective planning and development system.

The Draft Bill proposes to give the chief planner the power and responsibility both to maintain the plan, make amendments, and to make decisions under it. More checks and balances must be included in any revised ACT planning bill. One way to do this is to require decisions on significant or controversial development proposals to be made in an open and transparent way by an independent panel: a group of experts who are at 'arms length' from the ACT chief planner and the Environment, Planning and Sustainable Development Directorate.

Any ACT planning bill must also require decision-makers to provide clear and comprehensive reasons for approval or rejection of any development proposal: "Applicable desired outcomes achieved" is simply not sufficient rationale for a decision.