

# Submission on the Draft Planning Bill 2022

**Submission by** Curtin Residents Association (CRA)

**DETAILS DE-IDENTIFIED BY EPSDD**

The Curtin Residents Association (CRA) has had extensive experience of supporting and opposing major aspects of the current planning system. This has included public notification submissions, public demonstrations, DA and pre-DA consultations, Master Planning, Territory Plan changes, appeals to Ministers and ACAT processes. Although the CRA's focus is on the Curtin precinct as affected by a range of ACT planning processes, our frustration and our sense of the effective irrelevance of a community voice to decision making has been dominated by the sheer difficulty of meaningful engagement with the planning system.

Consequentially, this submission reflects the critical importance of community input and even more importantly the essential need for community trust. It is fair to say that that trust has been broken. It will not be regained by a proposal for reformation unless supported by:

- identification of bad 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 Accordingly it should be withdrawn pending a redraft, preferably carried out by an independent body, or at least at arms-length from the current bureaucracy.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 first paragraph of this submission must be part of such an assessment. 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.

## **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.

'Outcomes' and 'planning outcomes' are not in the Draft Bill's dictionary section. These properties are supposed to be described in the Territory Plan, but the bill describes only some aspects of the Plan, by its format and a list of contents, which are at a very high level only.

On the other hand the Draft Bill lists good planning principles (sect. 9), but without any of the associated desired outcomes, and these principles are partial: 'active travel' and 'affordability' of housing appear (surely these are outcomes for current policy settings, not principles), but without environmental quality or employment opportunity. The principles arbitrarily assign some outcomes to district plans (lifestyle, cultural, social) but not others (employment, cohesiveness) that should also be district-focused.

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).

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 in other jurisdictions have been known to stimulate innovation.

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 there is available for exposure a new version of the Territory Plan which is written with an outcomes focus, or at the least there is an extensive set of examples that show how outcomes will appear in the Plan as an improvement to the role of current zones, precincts, rules and criteria, 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).

## **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. Some amendments are notifiable instruments. Some decisions are explicitly removed from oversight by the Minister or the Assembly or by ACAT. 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. Similarly, sections 54-56 of the Draft Bill allow the chief planner to accept a proponent-initiated amendment and if so publish the amendment – or alternatively to reject it, or accept but not proceed with it, without giving any reason.