

Environment Planning and Sustainable Development Directorate

Dear Planning System Review Team

Thank you for the opportunity to provide comments on the draft Planning Bill 2022 (the Bill).

While the release of the Bill is a significant achievement commentary would have been better informed if the other components such as the District Plans and the new Territory Plan were available, thereby placing the Bill within an overall context.

Both the Planning and Development Act 2007 and the Bill are part of an overall system of urban governance which involves, government, the bureaucracy and the public. It recognises that governments need to work with communities to deliver an urban environment that provides a sustainable, competitive and equitable city which respects Canberra's unique legacy as a city in the landscape.

Consultation

The background papers on the planning system review acknowledges the need for improved transparency in the planning process. There are people who think that the planning system/planners are 'tone deaf' to the views of the community, that people who oppose developments are not listened to nor are their views properly considered or reasons provided why those views are not taken into account. Alternatively, there are people who consider any views opposing developments to be Nimbyism.

Steps are taken in the Bill to address the need for increased transparency – principally it seems through the provision of information, the location of all information on one website and allowing adequate time to consider Development Applications. At the same time the Bill abolishes the requirement for pre-development application community engagement for prescribed developments because it is not working as was intended.

The Minister for Planning and the Chief Planner have acknowledged over the years the importance of people in the planning system:

'We want a system that is clear, easy to interact with and understand, and which encourages participation in planning as well.' (pg 24)

'the reformed planning system will .. put people at the heart of the planning system' (pg 24)

Minister for Planning at Standing Committee on Planning, Transport and City Services Inquiry into Annual and Financial Reports 2020-2021 (24 February 2022)

'We need to think about what is important about our local community, and how the plan can help us to deliver on that. We have other tools to support that as well, such as the pre-DA design guidelines which we implemented a year or so ago— currently

under review after the first year of operation—and the design review panel.’ (pg 14)
Mr Ben Ponton, Chief Planner at Standing Committee on Planning and Urban
Renewal Inquiry into the ACT Planning Strategy 2018 (29 March 2019)

Local communities know their areas, they live in them, they experience life in these areas and have knowledge that should be considered in preparing proposals for development, especially if improved spatial and built outcomes are to be delivered.

From personal experience, removing pre-development application community engagement for prescribed developments removes the opportunity for people to engage in a conversation with the proponent to understand what is proposed, what impacts it may have and to provide information/opinions as to how the local area could be affected, and what options could be considered to address any adverse impacts.

Removing the pre-development application community engagement will mean that the first time the community is aware of a project is when the development application is notified. A different ‘conversation’ takes place through a Development Application process. It is a conversation prescribed through a statutory process where the development of proposals is well advanced and there seems little opportunity for ‘local’ input other than through appealing a decision.

The pre- development application community engagement for prescribed developments should be retained.

Good planning principles

The Bill establishes Good Planning principles which excludes community engagement. Separately, the Minister may make guidelines on principles for good consultation.

The integration of community engagement with planning is generally accepted eg NSW Environment, Planning and Assessment Act 1979 and SA Planning, Development and Infrastructure Act 2016. The Arnstein Ladder of Citizen Participation, the Gunning Principles and IAP2 establish core values that should be addressed in good community engagement:

- Those affected by a decision have a right to be involved in the decision-making process
- The engagement should be undertaken at an early stage
- People need to be understand the information that is provided to them – ‘plain english’
- Varsity of engagement methods should be used – targeted to the project and the community affected – including designing the engagement with the community were appropriate
- The interests of all people should be recognised
- The importance of openness and transparency
- A response to the views expressed by the people should be provided whether their input influenced the decision or not

The preferred approach is that community engagement be included within the Good Planning principles which would require the development of principles of good consultation. The principles of good consultation should be a disallowable instrument which would provide the opportunity for debate and discussion in the Legislative Assembly. The development of these principles should be prepared with input from industry, professional and community groups. Input from young people, people with disabilities, non-english speaking backgrounds and Aboriginal and Torres Strait Islander groups should be particularly important especially as such voices do not feature often enough in discussions about development proposals.

The Bill contains references to 'community participation' [s7(1)(a)], community 'consultation' (s10) and 'public consultation' [s34(1)(3)]. It is not clear why different terms are used or whether different meanings/processes proposed. The preference would be to use consistent terminology.

Under s9(2) 'activation and liveability principles':

- a. under the current Act the Territory Plan may make specific reference to affordable housing [s51(1)(d)] but the Bill only refers to 'living affordability' [s2(b)]. The reference to 'housing affordability' is a planning matter and should be used, as opposed to 'living affordability' which seems to imply a broader sense of affordability that may include housing but also other features such as cost of living items which are not directly related to planning outcomes.
- b. In (d) there is a reference to 'wellbeing' which differs to s8(1)(c) which refers to 'social wellbeing' – it is not clear why there is a difference

Under s9(2) 'high quality design principles':

- c. In 9(c) should the reference to 'urban design practices' be 'urban design principles' to be consistent with the heading.

Under section 9(2) 'natural environment conservation principles'

- d. bio-diversity connectivity and habitat values apply to urban open space – should include public spaces. As such areas provide opportunities to improve bio-diversity and habitat outcomes they should be added to the definition of 'urban open space'.

Under section 9(2) 'urban regeneration' principles:

- e. The term 'urban regeneration' usually refers to areas that have urban problems – unemployment, poor housing and socially exclusion. The terms 'urban renewal', 'urban intensification' and 'urban infill' are used interchangeably in the ACT Planning Strategy 2018 which adopted a compact city focus. Given the term 'urban regeneration' seeks to resolve urban problems the term 'urban renewal' seems more consistent and reflective of planning policies outlined in the ACT Planning Strategy 2018.

Functions of the Planning Authority

Under s15(1)(f) the Authority has a variety of functions including 'to promote high quality design and good planning outcomes': - given the statements made by the Chief Planner¹ that the existing system is insufficient to achieve high quality design this function needs to be more than just 'promote' – it must 'provide', 'deliver' or 'implement' – promotion is not sufficient.

Territory Priority Projects

The concept of using a Territory priority project mechanism to fast-track development of critical public/private infrastructure and facilities is supported. It is noted that:

- if required, an amendment to the Territory Plan may be progressed as a Territory priority project
- there is no merit review of a DA submitted for a Territory Priority project, with judicial review being restricted
- the Minister is required to issue a notice of the intention to declare a development/Territory Plan amendment as a Territory priority project with the community having 15 days to provide comment on the intention to issue a notice

It is not clear from the Planning Bill 2020 whether the period for comment is on the intention to issue the notice – which would go to the criteria to be considered when deciding to issue a notice – or whether the comments go toward the development and its necessary subsequent Territory plan variation. The explanatory documentation provided to support understanding of the Bill suggests that the 15-business day period of the intention to issue a declaration applies to the possible Territory Plan variation.

In that case it is suggested that the notice should clearly identify and articulate the proposed Territory Plan amendment – preferably with a draft of the proposed amendment attached to the notice. This would be consistent with the intention to provide people with as much information as possible about what development is proposed.

The timeframe within which people need to provide comments is constrained and inconsistent with the timeframes that have been used by EPSDD when seeking comments on variations to the Territory Plan. It is suggested that the period for comment be extended to at least 30 business days.

The legislation is silent on how the Minister is to respond to the comments that have been received. Where an amendment is made to the Territory Plan the legislation spells out how

¹ Chief Planner - I have talked in various forums about my desire to see, and the minister has made the point to me that he would like to see, improved design quality and outcomes, in terms of what the planning system can deliver. (pg 13) Standing Committee on Planning and Urban Renewal Inquiry into the ACT Planning Strategy 2018 (20 March 2019)

comments received are to be responded to. These requirements should be applied with Territory priority projects.

Other matters

Some comments on individual sections are at Appendix 1.

While resourcing and evaluation of outcomes are not raised in the legislation, they are matters which need further consideration:

- the resources necessary to deliver on an outcomes-based decision-making process; and
- the evaluation of an outcomes-based planning system vis a vis the current system and how improvements are delivered.

Having taken the time and resources so far in the development of a system that is designed to deliver better outcomes, it is important that the system be properly resourced and that better outcomes be delivered.

I would also like to acknowledge all the time and effort of the Planning System Review Team in engaging with the community on the Planning Bill.

Once again, thank you for the opportunity to provide input on the Planning Bill 2002. If clarification is needed on the issues raised, please do not hesitate to contact me at

Personal details redacted by EPSDD

Appendix 1

- Under s21 the terms 'cohesive urban renewal' and 'cohesive planning' are used – it is not clear what these terms mean, and there is inconsistency with s9(2) uses the term 'urban regeneration'?
- Under s35 there are:
 - a. two sections headed 35.1. Under the second 35.1 the planning strategy is not to be considered when assessing a significant development or Territory priority projects – given that a significant development or Territory priority project could include a zoning change why wouldn't the planning strategy be a relevant consideration? Or does the first s35(1) apply?
 - b. Does the reference to 'planning strategy' in s35 include the district strategies?
- Under s43(c) the Territory plan
 - a. 'must promote principles of good planning' – given that the term 'principles of good planning' have been defined earlier in the Act shouldn't the Territory Plan 'be consistent' with the principles of good planning.
 - b. 'may give effect to relevant outcomes related to planning contained in other government strategies and policies'. Given s7(2)(d) should 'planning' be 'the planning system'?
- Under s 44(3) 'The consultation report must include the issues raised in any consultation comments about the draft territory plan'. The consultation report must show how the issues raised have been responded to. Have they been accepted, or not – and if not, why.
- Under Part 5.3 Territory Plan Major Amendments it should be made clear that a proponent is required to undertake community engagement on a proposed amendment to the Territory Plan?
- Under s60(6)(b) the consultation requirements for a draft major amendment do not apply 'if, in developing a government policy or strategy, a government entity has carried out consultation similar to that required under this section in relation to the substance of the draft amendment'.

Earlier parts of s60 are quite specific about what needs to be issued, so it is clear what documentation is required for people to develop an understanding of the draft amendment.

The wording of s60(6)(b) is very vague and the level of transparency provided under draft major plan amendments is diminished under the current wording. The opposite should apply if government entities are seeking to not proceed with a major plan amendment but rely on documentation that is only partially developed at the time of strategic or policy consultation.

It is assumed that the subsequent draft major plan amendment would be initiated by the Minister. With a need to provide a report on the consultation carried out as well as other documentation that would normally be associated with a draft major plan amendment.

- Under s64(4) there is a requirement to prepare a report on the issues raised in the draft major plan amendment consultation. Transparency would be improved if it was made clear that the report should provide a response to the issues that have been raised.