



Unit 4, 9 Sydney Avenue
Barton ACT 2600
t (02) 6285 7300
f (02) 6280 0333
hia.com.au

15 June 2022

Environment, Planning and Sustainable Development Directorate

RE: ACT Planning System Review and Reform Project 2022

The Housing Industry Association (HIA) is pleased to provide comments on the *ACT Planning System Review and Reform Project March 2022* (Planning Bill).

HIA notes that the key principles of the Planning Bill, as outlined on page 2 of 'The New Planning Bill Overview' paper, align well with HIA's own policy on *Principles of a Good Planning System*. A copy of the HIA Policy is attached and the Planning Bill's key principles of easy to use, certainty, flexibility, transparency and outcomes-focused align well.

This submission focusses on the following key policy areas set out within the Planning Bill consultation documents, as follows:

- Objects of the Planning bill
- Principles of good planning and good consultation
- A new Territory Plan
- Development assessment
- Exempt development
- Access to information
- Other – transitional provisions

Object of the Planning Bill

HIA notes that the object of the Planning Bill says that the planning system will become 'outcome-focused' and to capture new outcomes including ecological sustainable development; the importance of the Traditional Custodians of the land; and a scheme for community participation.

There are two comments that we would like to make about the Object of the Planning Bill, as follows:

Firstly, that we are generally supportive of moving to outcomes-based assessment for development applications as this should allow more scope for innovative design and good design outcomes rather than box ticking.

A comment however, is that there will need to be professional development and upskilling of assessment planners to allow for change in assessment approach. Planners will need to have the skill set to switch from a 'rules-based' assessment approach to an 'outcome-focused' approach, and this may be more difficult for junior less-experienced assessment planners than team leaders.

An advantage of a rules based system is the certainty that it affords applicants. So it is also important that an outcomes focussed scheme does not become overly subjective to the detriment of proponents.

Secondly, there appears to be no mention of the importance of housing affordability in the objects of the Planning Bill. Housing affordability is at a crisis point across all States and Territories and can be addressed in part, through the planning system.

For example, listed in the purpose of the *Queensland Planning Act 2016* is the requirement create a balance between the other outcomes of the Act with achieving '*liveable and resilient communities with affordable, efficient, safe and sustainable development*'; (refer Ch 1, 3. (3) c. (i)).

Principles of good planning and good consultation

HIA is supportive of reform to increase transparency in the Planning Bill, as this will build trust and confidence in the planning system. In line with this, we also support the Planning Authority's website becoming a central source of information for stakeholders and the community.

HIA has some concern with the proposed changes to neighbour notification and consultation for exempt development. This is discussed in more detail under the exempt development heading below.

A new Territory Plan

There will be more certainty for industry about the full impacts of the new planning system once the new Territory Plan is exhibited later this year. Therefore, HIA welcomes the opportunity to be part of the dedicated industry expert, technical and community Territory Plan reference groups that are mentioned in the Planning Bill consultation material.

Development assessment

HIA notes that there will be some significant changes made to the development assessment process introduced as part of the Planning Bill. The changes include a single assessment track, rather than having code, merit, and impact pathways; new considerations for deciding development applications and the publication of pre-decision advice.

As discussed above, HIA is generally supportive of moving to the single-track 'outcomes-focused' approach if there is also sufficient professional development and upskilling of assessment planners to allow for the change in assessment practices. Planners will need to have the skill set to switch from a 'rules-based' assessment approach to an 'outcome-focused' approach, and this may be more difficult for junior less-experienced assessment planners than team leaders.

There will need to be the level of confidence and depth of experience within the Authority to make the switch from a 'rules-based' assessment approach to an 'outcome-focused' approach. What level of training and up-skilling will be available to the assessment teams, so that all stakeholders including the construction industry and the community have the confidence that correct decisions will be made. In addition, there needs to be measures in place to ensure consistency in decision making.

HIA is supportive of the proposal to introduce pre-decision advice from the Authority, allowing for advice to the applicant prior to making a formal decision on the application.

Finally, we note and support the comment within the consultation material that the Planning bill does not prevent mandatory limits from being included within the planning system where necessary, for example building heights, site coverage or setbacks in residential zones, to limit impacts on neighbour & public spaces.

Exempt development

HIA supports the new planning system creating a standalone *Exempt Development Regulation*, to make it easier to find out about the types of exempt development. This aligns with the HIA Policy - Principles of a Good Planning System in terms of certainty, consistency, transparency, and simple clear processes.

HIA also supports the continuation of the Single Dwelling Housing Code (SDHC) in keeping low impact developments outside of the broader development assessment process. We also acknowledge the important role exempt development exemption declarations (encroachments) have, to deal with minor departures from the SDHC and that there will be changes to the provisions for solar encroachments and expiry times.

HIA notes the requirement to notify neighbours for the purpose of exemption declarations, and that the neighbour should receive site plans, elevation plans, shadow diagrams where an encroachment into the solar building envelope is proposed.

However, we are unable to find where this is included in the Planning Bill. Also, it is important that confirmation is provided as to whether a neighbour will be able to make a submission about the potential encroachments or is the notification purely for information purposes. It is HIA's opinion that decisions about encroachments should be made by the qualified planners at the Authority and be based on their professional experience.

Transitional arrangements

With the proposed commencement of the *Planning Act 2022* in early 2023, there is a need for transitional arrangements to be in place.

These arrangements should allow for development applications lodged before the commencement of the new Act to continue to be assessed under the *ACT Planning and Development Act 2007* and *Territory Plan 2008*.

HIA would be pleased for the opportunity to discuss the details this submission with the ACT Government and provide more information if required. We also look forward to being notified about the consultation for new Territory Plan.

Please contact myself on 6285 7301 or email g.weller@hia.com.au should you require any further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G. Weller', with a large, stylized loop at the beginning.

Greg Weller
Executive Director
ACT and Southern NSW

APPENDIX I



HIA Policy

Principles of a Good Planning System

HIA's Position Statement

1. Certainty

- a. The planning system must provide certainty to those utilising it.
- b. Planning codes and policy must be clearly written to provide certainty to the users and planning authorities of the items that are required to be addressed and the available scope for discretion in decision making.
- c. Assessment and determination processes must be reasonable, efficient and relevant to the zoning of the land and other known constraints on the land.
- d. The planning system should seek to eliminate repetition and duplication of information requests and assessments.
- e. Planning application requirements must not overlap or exceed building application requirements.
- f. Planning systems must support truth in zoning by facilitating the development of permitted land uses within each zone.
- g. Planning systems should not permit the retrospective application of 'new' requirements or constraints unless compensation is provided to property owners who lose a development right.
- h. Fees and charges for planning services should reflect the cost of assessment, be readily calculated and be disclosed prior to lodgement of any application.
- i. Planning codes and policies should not incorporate technical building requirements.

2. Consistency

- a. Policies developed to guide planning decisions must be written in concise language and be readily and consistently interpreted.
- b. The planning system should support consistency of outcomes by providing adequate guidance for design development and decision making.
- c. Planning design codes should be applied at the highest level (i.e. state government) to avoid ad-hoc design standards across individual local council areas.

3. Flexibility

- a. Planning codes and policy should include both performance objectives and prescriptive standards to provide a degree of flexibility and support changing housing market trends and innovation in housing design and technology.

4. Transparency

- a. The planning system should be transparent to the community and the development industry.
- b. Planning decisions should be easily understood and have limited potential for real or perceived intervention or influence.

5. Simple, clear processes

- a. The planning system should provide processes that do not create undue regulatory burdens for users.
- b. Information requirements should be concise, with clear obligations, steps and timelines for the provision of details to the planning authority by an applicant.
- c. Planning assessment and determination processes must be reasonable, efficient and relevant to the zoning of the land and type of development proposed.
- d. The planning and building systems must provide a single approval pathway for single dwellings and dual occupancy dwellings on land zoned for residential development.

6. Strategically led planning

- a. The planning system should embed a strategic approach to spatial planning which balances competing priorities and requires planning authorities to take a holistic approach to achieving planning outcomes, recognising a balance between economic, social and environmental factors.

7. Independent, merit based decisions

- b. Planning decisions should be made by informed, independent parties based on the merits of the application, compliance with any relevant statutory requirements and a sound evidence base.

8. Accountability for decisions

- a. Planning system should provide clear accountability for the decision making processes and the decisions made on behalf of the community.
- b. All planning decisions (zoning, subdivision, development) should be provided with a right of appeal to an independent administrative body.
- c. The planning system should not allow multiple planning authorities or agencies to be responsible for overlapping requirements or the duplication of requirements and approval obligations.

9. Outcome oriented decisions

- a. Decisions in an effective planning system must be focused on the outcomes, rather than details that have little bearing on the impact of development on the community.
- b. The planning system should facilitate:
 - i. The development of land in an economically viable manner in accordance with its zoning.
 - ii. The timely zoning of land for residential purposes based on a transparent strategic assessment involving all relevant agencies with clear roles and responsibilities for all stakeholders.
 - iii. Governments managing land supply, in consultation with the residential development industry, to ensure there is an adequate supply of land at each stage of the land supply pipeline.
 - iv. The delivery of public infrastructure that supports residential land zoning and development in a timely manner for the social and environmental benefit of the whole community.

10. Timely decision making

- a. Timely decision making means compliance with statutory timeframes where they exist, recognition of the importance of economic investment that results from development approvals and agreement between decision makers and applicants on a program to decision making.

Background

- In 2001, HIA launched a national position statement on planning systems, known as Better Living Environments. The position statement focused on three core tenants – flexibility, predictability and affordability. Within these tenants, various case studies and examples of good planning practices that would assist in the delivery of new land and housing were identified.
- Following Better Living Environments HIA has developed a series of policy statements that address individual elements of the planning system, covering issues such as ‘truth in zoning’, managing urban land supply, development contributions, subsidised affordable housing and more. Today these planning policy statements form the basis of HIA’s advocacy for an improved planning system.
- It was agreed there would be benefit in creating a statement that concisely sets out the fundamentals of a good planning system that can serve as a foundation statement on the planning system and the delivery of land and residential developments.
- In the absence of other regulatory levers, the planning system is now seen as the panacea for any matter that governments believe warrants oversight, making the system extremely complex for all parties to navigate.
- Over the last decade, policy makers have sought to address a growing list of social and environmental issues that have not traditionally been matters for consideration in the planning system.
- A planning system must recognise the importance of delivering housing affordable outcomes. This can only be achieved where the planning system manages the zoning of land and the development of that land in a timely manner balancing the social, economic and environmental benefit of the whole community.