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15 June 2022

Ben Ponton

Director-General and Chief Planning Executive, EPSDD

[Ben.Ponton@act.gov.au](mailto:Ben.Ponton@act.gov.au)

Dear Mr Ponton

Re: **Submission to the draft ACT Planning Bill 2022**

The various suburban residents’ Groups, the Inner South Canberra Community Council (ISCCC) umbrella group and other organisations, have submitted far broader reaching comment than mine here and I support them. I endorse in particular the ISCCC submission and that put by Richard Johnston, Life Fellow Planning Institute of Australia, along with the Kingston and Barton Residents’ Group (KBRG) and join with them to call on the government to not progress the draft Bill until at least a draft Territory Plan and draft District Strategy are available for public scrutiny.

In the following submission I have limited comment to **community consultation** and the **planning for social housing**. These major planning issues of concern in our society, I maintain, deserve to be better articulated within the draft Planning Bill 2022. Firstly, I request, re **community consultation,** that these words be embedded in Part 2.2 Planning Principles at 9 Principles of Good Planning;

* **that the Principles of Good Consultation are integral to the Principles of Good Planning and should be included in the list at 9 (1) to be accompanied by explanation in the same manner applied to the current list at 9 (1);**
* **that The Gunning Principles for Public Consultation made applicable to all public consultations that take place in the UK, be adopted and articulated in the Principles of Good Consultation of the new Act. They consist of four fundamental principles, which if followed, are designed to make consultation fair and lawful. The Minister’s guideline, a notifiable instrument would then enlarge on such points;**

**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 permit “intelligent consideration” and response;**

**3. Adequate time is given for consideration and response; and**

**4. The product of consultation is conscientiously taken into account by the decision maker(s);**

* **that in the interests of transparency and fairness appeal to ACAT be available to public representors with regard to approved development in IZ2 Mixed use industrial zoning;**
* **that pre-DA consultation for prescribed development be included in the draft Bill with the process to be determined with advice from community;**
* **that the process of EIS exemption be retained because it allows public representation and the ESO process does not; and**
* **that the Director-General and Chief Planning Executive require his or her staff in the Territory Planning Authority to be well versed in all new legislative instruments and to respect community participation in the planning process.**

1. **Community Consultation.**

There are plenty of models of good consultation. But in the current Act, public consultation is an inherently reactive process. It involves a detailed proposal being formulated with interested parties being then invited to comment on how the proposal might potentially affect them.

Experience in the ACT demonstrates that community groups already have limited sway on individual development applications. Developers have significantly greater access to government ministers and public servants that begets influence and outcomes than do community groups.  Developers also have techniques (negotiating fall backs from outrageous proposals, relying on amending approved development applications, providing reports which are not comprehensive) that trump community concerns in all but a few cases. Review of the Planning Act provides the opportunity to change.

The draft Bill, according to Khalid Ahmed, adjunct professor, Institute of Governance and Policy Analysis, University of Canberra, serves to further diminish the role of the community in planning decisions. Pre-DA consultation disappears and the powers and discretionary authority of the Chief Planning Executive are increased.

Will removal of the Environmental Impact Statement (EIS) exemption process which allowed for public representation now lead to an increase in the number of Environmental Significance Opinions (ESO) approvals in order to avoid the more rigorous EIS process? The ESO process requires no public notification thus enabling an outcomes-focussed process of covert government entity/agency expediency for a significant development. The provision of text on the Opinion on the government website does not allow for any public opposition. ESOs often concern large and impactful projects.

The Design Review Panel is maintained but it is well known that developers treat design compliance as a tick for their proposed development and are reluctant to change to accommodate residents.

Simpler, more flexible and outcomes-focused approaches may well result in even more rapid box-ticking. Consider the following case studies arising under the current rules-based system;

1. **Manuka Green:** Government documents obtained under FOIrevealed that the government “solicited” unsolicited proposal designed to financially support Manuka Oval costs, was seriously flawed. Grocon/AFL Giants/ACT Government proposed insertion of more than 1,000 one-bedroom apartments around the oval with no parking available beneath, together with a takeover of the Manuka public pool and Telopea Park School tennis courts as well as the provision of a budget hotel for fans and a shopping precinct. It became a moving feast until Chief Minister Barr stepped up and cancelled the process in the midst of mounting opposition.
2. **Fyshwick MRF:** Everyone knows that Fyshwick is in reality a major employment base, services hub and retail centre for Central Canberra. Consequently, placing Canberra's principal waste handling facility in a location which obliges high volumes of heavy vehicles to transit through the heart of Fyshwick introduces significant impacts. There was opposition from community in public meetings which attracted 240, 90, 95, 90 adverse attendees from August 2017 to prior to the 2020 election. The rejection of the Planning process was unprecedented. ACTPLA was finally reined in when the waste proposal was ended with a unanimous vote in the Legislative Assembly to pass the 2021 Amendment Bill, which thankfully continues to protect Fyshwick in the draft.

When existing rules weren't followed, the cost in millions of ratepayers’ dollars for the Fyshwick waste fiasco delivered an ACTPLA defeat in the Supreme Court; approval for a government owned white elephant rail freight waste terminal; a questionable direct sale of government land reduced by $249,000 for relocation of a watermain which now won't happen; approval by ACTPLA to change the lease use ignoring the environmental clause and restricted use of the original lease; the introduction of a waste truck business on busy Ipswich St without the approved traffic lights or required truck wheel-wash facilities; and still the site of the former major Shell fuel depot remains without the decommissioning of fuel storage tanks both underground and above ground. An embarrassing and costly poor planning outcome.

In this proposal to receive, sort and transfer most of Mugga Lane’s 300,000tpa landfill waste at Fyshwick, there were multiple DAs approved with conditions. Claims by the developer were emboldened because no public appeal to ACAT was available. To the contrary, should the developer not be satisfied, appeal to ACAT was available. How was it possible that the opposing 95% of the 464 public representations, some substantial, all from the heart, in addition to ACTNowaste opposition were simply discounted by the Minister? FOI documents reveal that it was brought to the attention of the Minister that the developer was expected to take legal action should the Minister delay by choosing to form a Panel of Enquiry sought by a public ISCCC forum of 95 residents. The Minister chose to take no action enabling the DA to be submitted.

An example of sloppy work is the Notice of Decision for the above rail freight terminal noted that 59 representations were received when the number provided under FOI was 73. Another example of sloppy work was the direct sale, DS2015-217 of unleased Territory land without any signed application for eligibility. Despite this fact confirmed by the EPSDFOI team and prior to an offer of sale, the issue of the sale was raised with the Minister and decision makers in the SLA and ACTPLA but to no avail. ACTPLA’s shortcomings in this matter are numerous and serious. So much so that the government needs to root out its incompetencies and reform its management. It would be a good start to allow public appeal to ACAT over development proposed on IZ2 mixed use industry zoned land simply in order to “to keep the bastards honest.”

1. **Kingston Centre:** A Geocon proposal on Giles St for ground floor commercial development with up to seven apartment levels above was reduced to 4 levels of commercial premisses following the intervention of the two government candidates for Kurrajong, Andrew Barr and Shane Rattenbury, during the pre-DA consultation phase. In the heritage CZ2 area of Kingston at that location two levels are allowed. For many substantial reasons 75 representations chose the 2 stories as suitable at that site and this will be in the face of the single developer and his profit.

When these unpopular major developments disappeared it just so happened to be an election year.

The ACT Civil and Administrative Appeals Tribunal has in the recent past severely criticised ACTPLA for its inability to administer its planning legislation. We need a guarantee from the Director-General and Chief Planning Executive that his/her staff in the new Territory Planning Authority will be well versed in the new legislative instruments and apply the law fairly. It is apparent that the draft Bill cannot move away from this type of adversarial system whilst guidelines about good consultation “may” be developed by the Minister (s10) and engagement of the public as in point 2 above is treated with disdain by planners and developers alike.

To include public consultation as a Principle would align with s7 Object of Act which at present vaguely “provides a scheme for community participation.” There just needs a statement of outcomes which the Minister’s guidelines, a notifiable instrument will be designed to achieve.

1. **Planning for Social Housing**

This submission further requests that the following words be inserted at 7 (3) Object of Act following 7(3)(b) *planning for population growth…..* as an additional planning matter of importance in achieving 7 (1) Object of the Act. A new (c) as an additional object would then read;

* **Planning to ensure public/social housing is accessible, equitable and appropriate for homeless people and those most vulnerable and with the greatest need in our society**

The new Principle with the aim of providing good quality housing for those in need would align with s7, Object of Act at 7 (1) non-specific *to promote the well-being of residents* also not covered by

*(e) promote high standards for the built environment through an emphasis on design quality and universal design for the benefit of people with differing needs and capabilities;*

**There is a crisis.** What is the Planning outcome for the most vulnerable? We are better than this.

There is a Housing Strategy but after four years of its implementation it is failing when the number of public housing dwellings in the ACT in 2021 is below the number in 2012 (10,950) and the peak in 2018 (11,181) **There are 164 fewer households in social housing in the ACT in 2021 compared to 2020**, and this number is lower than a decade ago in 2012 (11,328) and its peak at 11,435 households in 2017. The ACT had a shortfall of more than 3,000 social dwellings and more than 2,000 Canberrans experiencing homelessness last year. [25 Jan 2022 see attachment 1 – Canberra’s Homeless and Housing Crisis Worsens].

This draft Planning Bill talks about prosperity, or seemingly maximising profits, in its objects but there is nothing about planning for the provision of the most vulnerable people who need our care. Planning may never have claimed a direct role in public housing apart from not excluding it through restricted zoning or the approvals process. Although a new outcomes-focussed Territory Plan could strive to house all those vulnerable people and our district strategies could pay lip service to the needy, **it is** **necessary within our pivotal Planning Act to include reference to such a major, critical and desired outcome and acknowledge the need to achieve a more equitable outcome in housing.**

“The average wait time for standard social housing is now more than 4.2 years, or 1541 days. This is not surprising as the share of social housing in the ACT has declined from 7.6% in 2014 to 6.7% in 2020.” [25 Jan 2022 see attachment 1 – Canberra’s Homeless and Housing Crisis Worsens].

Will we, like the NDIS, keep on redefining criteria in order to downsize the need or do we maximise delivery of housing types to include social housing and use the power of a new Planning Act to achieve desirable outcomes in an outcomes-based system? “Investment in social housing not only makes sense for our community’s well-being, but it also makes economic sense. KPMG has shown that for every $1 million of public investment in social housing, GDP is boosted by $1.3 million.” [Dr Emma Campbell, CEO, ACTCOSS]

The ACT has a *Human Rights Act* providing economic, cultural and social rights and includes a Right to Housing. The impacts of homelessness and housing stress consistently disproportionately impact marginalised and disadvantaged people. It is time for Planning to allocate and develop sufficient land for social housing and to acknowledge the need in the form of an Object of Act of the draft Bill 2022.

Planning is about the type of community we want to live in. My proposed changes are modest but worthwhile and fair. Barbara Moore 15/06/2022

**ATTACHMENT to SUBMISSION to the draft PLANNING BILL 2022 – Barbara Moore**

[Canberra's Housing and Homelessness Crisis Worsens](Canberra's Housing and Homelessness Crisis Worsenshttps://www.actcoss.org.au › news-events › media-release)

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Media release: Canberra's Housing and Homelessness Crisis Worsens

25 JANUARY 2022

The ACT Council of Social Service (ACTCOSS) has called on the ACT Government to urgently review the implementation of its housing strategy and improve community oversight following today’s release of a national report that shows major failings in the ACT Government’s policy to address the Territory’s housing crisis.

The Productivity Commission’s Report on Government Services (RoGS) released today highlighted that:

* The ACT continues to have the highest rate of rental stress for lower-income private renters of any Australian jurisdiction (73% compared with 50% nationally)
* The number of public housing dwellings in 2021 is below the number in 2012 (10,950) and the peak in 2018 (11,181)
* There are 164 fewer households in social housing in the ACT in 2021 compared to 2020, and this number is lower than a decade ago in 2012 (11,328) and its peak at 11,435 households in 2017
* More than 30% of clients who approached homelessness services with a need for accommodation did not have their needs met.

ACTCOSS CEO Dr Emma Campbell said: “The ACT Housing Strategy has been in place for four years, yet we see growing numbers of Canberrans experiencing homelessness or at risk of homelessness.

“This reflects a lack of action by the ACT Government and Australian Government to ease housing stress and provide additional social housing.

“Despite an urgent need for social housing – the ACT had a shortfall of more than 3,000 social dwellings and more than 2,000 Canberrans experiencing homelessness last year – the number of social houses available in the ACT is declining. The RoGS data tells us that there are fewer social housing dwellings today than there were in 2018, when the ACT Housing Strategy was launched. Meanwhile, almost 3,000 households languish on the ACT’s social housing waiting list.

“ACTCOSS welcomed investments in housing announced in the most recent ACT Budget, including $80 million for maintenance of public housing, $19 million for the Growing and Renewing Public Housing Program and $8.6 million for specialist homelessness services, but the failure to deliver meaningful outcomes for Canberrans is frustrating.

“The ACT is currently the most expensive capital city in which to rent a house or unit. The ACT has the highest rate of rental stress among lower-income private rental households, with 73% of lower-income private tenants paying more than 30% of income on housing.

“Increasingly, people in full-time work are unable to afford rental rates. Recent research by the Everybody’s Home campaign for Homelessness Week 2021 found that essential community workers would need to spend between one-third to two-thirds of their weekly wages to rent an apartment in most Canberra suburbs, forcing them into rental stress,” Dr Campbell said.

“Applications for public housing in the ACT have increased dramatically over the last four years. As at 30 June 2021, there were 1,920 new greatest needs applicants, an increase of 117% from 2017. The average wait time for standard social housing is now more than 4.2 years, or 1,541 days. This is not surprising as the share of social housing in the ACT has declined from 7.6% in 2014 to 6.7% in 2020.

“Further, for those who can access public housing, the conditions of the dwellings are worsening. In 2021, more than a quarter (26.6%) of public housing households had less than four working facilities and more than two major structural problems. Tenants with disabilities found that public housing amenities did not meet their needs 28.9% of the time.

“The impacts of homelessness and housing stress consistently disproportionately impact marginalised and disadvantaged people. Aboriginal and/or Torres Strait Islander peoples, the LGBTIQA+ community, people with disabilities, young people and older women are all at an increased risk of housing insecurity and homelessness.

“ACTCOSS makes no apology for continuing to hold all political parties to account on the issue of affordable housing for people on low incomes. This year’s RoGS highlights that the ACT Government’s current housing policies are failing to address the ongoing crisis.

“We also call on the Australian Government to raise the rate of income support to enable people to keep a roof over their heads while looking for employment, and to invest in housing as a key part of Australia’s recovery from the COVID-19 health and economic crisis.

“Investment in social housing not only makes sense for our community’s wellbeing, but it also makes economic sense. KPMG has shown that for every $1 million of public investment in social housing, GDP is boosted by $1.3 million," said Dr Campbell.

ACTCOSS has been calling on the ACT Government to urgently implement a range of policies to fix the housing and homelessness crisis including:

* The full, transparent and timely delivery of the ACT Housing Strategy and the delivery of all commitments in the Parliamentary and Governing Agreement which includes 400 additional public houses and 600 affordable rental dwellings
* Empowering Community Housing Providers (CHPs) to address the shortfall of affordable homes through access to affordable land, rezoning to allow development by CHPs and rates exemptions
* Enacting all economic, social and cultural rights in the ACT *Human Rights Act 2004* including a Right to Housing.

*ACTCOSS advocates for social justice in the ACT and represents not-for-profit community organisations. Follow us @ACTCOSS on Twitter, Facebook and Instagram.*

**For more information or comment, please contact**  
**Dr Emma Campbell, CEO, ACTCOSS, on 0424 910 617.**