



Legislative Assembly for the
Australian Capital Territory

Standing Committee on Environment,
Planning, Transport and City Services

Submission Cover Sheet

Inquiry into the Planning (Territory Priority Project) Amendment Bill 2025

Submission number: 023

Submitter: Ben Fox and Kate Fielding

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To: Standing Committee on Environment, Planning, Transport and City Services

Re: Inquiry into the Planning (Territory Priority Project) Amendment Bill 2025

17 March 2025

Dear Committee members,

We write to express our significant concern about the Planning (Territory Priority Project) Amendment Bill 2025, which seeks to abolish ACT Civil and Administrative Tribunal (ACAT) review rights in relation to public housing development decisions.

Our concern comes in part from current experience of trying to navigate the feedback process around the proposed public housing significant development at 100-102 Macarthur Place (DA 202443268).

Macarthur Place currently comprises a mix of public and private housing residents with a diversity of ages and abilities living in a small friendly cul-de-sac. Macarthur Place is a longstanding example of private and public housing being successfully co-located.

As is clear through the submissions made by residents from both public and private housing in response to the proposed development, the neighbourhood strongly welcomes the redevelopment of this site, however the current proposal poses significant risks and issues.

The proposed development nearly doubles the number of dwellings in our small cul-de-sac, creating increased traffic hazards, noise, loss of privacy, and disruption to the currently well-designed safe feeling of the precinct, originally planned as a cohesive two-storey neighbourhood. It breaches solar envelope requirements, reduces fire hydrant access, cannot handle the volume of domestic kerbside waste it will produce, and introduces risks such as an unshielded substation and unsafe bicycle and pedestrian access. These issues have caused widespread frustration and concern among our community that demonstrably supports development, densification, and public housing when thoughtfully and safely planned and done.

To date the experience of trying to have these considered and addressed has reinforced our concerns that the removal of ACAT review rights would take away one of the few options available to local residents to have legitimate concerns addressed.

Documents obtained by FOI indicate that the ACT government is working to rush this through, despite issues being raised internally and by various stakeholders. The documents obtained through FOI have revealed serious misconduct, and to date neither Ministers nor agencies have provided a response to questions about these conduct issues, and other FOI requests have been delayed for more than 5 months at the time of writing.

As one of the first projects under the new Territory Plan—and one led by the ACT Government—this development should serve as a model of best-practice high quality design and community alignment. Instead, it raises serious process, safety, design, and amenity concerns that undermine its potential benefits.

Removing the ACAT review rights would mean that neighbourhoods like ours would have even less options to raise legitimate concerns and have them addressed transparently and independently. In turn, this will erode community trust and confidence in the planning and approvals system.

For additional background we include as an attachment a summary of key concerns relating to the conduct of TCCS, Housing ACT; delays in the FOI process and ACTPLA conduct prepared by another resident of the cul-de-sac.

Warm regards,

Ben Fox and Kate Fielding

Contact details:

Phone:

Email:

Address:

Attachment: Summary of key concerns relating to the conduct of TCCS, Housing ACT; delays in the FOI process and ACTPLA conduct

Prepared by a resident of Macarthur Place

Submissions on the Planning (Territory Priority Project) Amendment Bill 2025

The ACT Government asserts that ACAT review of public housing decisions is contrary to the public interest due to unacceptable delays in development approvals and associated costs.

This position appears to be based on the assumption that ACT Government agencies involved in the approval of public housing projects will act honestly and lawfully, and therefore access to independent merits review is unnecessary. Unfortunately, in my personal recent experience and for the reasons I outline below, that has been far from the case.

It is an extreme move by the ACT Government to abolish independent merits review rights in relation to public housing development decisions. Tribunal review is a crucial part of the administrative law framework in ensuring access to justice. This is especially so in circumstances where the ACT Government is not only the applicant developer, but is also the various entities that provide necessary pre-approvals, as well as the final decision-maker.

I am concerned that that a loss of ACAT review will lead to a further decrease in the quality of ACTPLA decision making. Under the Bill, if I am dissatisfied with Minister Steel's personal final decision, my only option will be to go to court. This is far from satisfactory – not only is judicial review limited to examining error of law (as opposed to the merits of a decision), it is also prohibitive in terms of both costs and access.

Concerns about the proposed development

Housing ACT seeks to build a dense public housing complex in the middle of my street, Macarthur Place. The street is a small, quiet cul de sac with limited street access. It is made up of identical duplex homes that already comprise a desirable mix of private and public residences. None of the local residents opposes a sensible increase in public housing in the street, however, we all have serious concerns about the bulk and scale of the proposed development (which seeks to almost double the residential capacity of the street on two blocks) and the serious implications both the development, and its construction, would necessarily have for safe access to the street.

I am concerned that Housing ACT is seeking to fast-track an ill-suited development in pursuit of broader government policy objectives at the expense of the local community, and that the ACT Government appears prepared to act dishonestly and unlawfully in the process.

Concerns about the conduct of TCCS and Housing ACT

Documents obtained under FOI from Transport Canberra and City Services (TCCS) indicate what appears to be a serious instance of misconduct perpetrated by officers of both TCCS and Housing ACT in connection with the development application.

Given the scale and density of the proposed design, normal kerbside waste collection is not possible and so Housing ACT was required to obtain approval for a customised waste removal solution.

While TCCS and Housing ACT represented in the development application that TCCS had given the necessary approval, documents subsequently obtained under FOI from TCCS indicate that this was false, and that no approval had in fact been given. Further, the identified waste removal solution was never capable of being approved, and had been described by TCCS officers themselves as inherently unsafe for the street due to existing traffic and access conditions. The development application should never have been submitted or accepted, and FOI documents also indicate that despite ongoing efforts, Housing ACT has not been able to gain approval for a viable waste removal solution to date.

The two agencies colluded to deliberately make false and misleading representations to ACTPLA and the public, in order to progress a development application that was in breach of clear planning requirements, and which is likely to have serious adverse consequences for the local community.

In late November 2024, I wrote to Ministers Steel and Berry (as the ministers responsible for Transport and Housing), raising my concerns and asking them to investigate the matters. To date, I have not received a response from either minister or agency in relation to my concerns.

Concerns about delays in FOI access

Despite making an FOI request over 4.5 months ago, Housing ACT has refused to provide me with any documents relevant to the development application. Housing ACT initially obtained a 2.5 month extension from the ACT Ombudsman until 7 February 2025. On 7 February 2025, after I requested the FOI decision, I was advised that a further extension had been sought (again, without my knowledge) until 31 March 2025.

This delay in access to relevant information is unreasonable and prejudices my ability to make informed submissions about the development to ACTPLA. Under ss 180 and 186 of the Planning Act 2023 (ACT), when making a decision on a development application, ACTPLA is only required to consider public submissions that are made within the public notification period. The first 4-week notification period ended on 15 October 2024, before I received any documents under FOI. As this is a significant development, there will be a second, 10-day notification period which could commence at any time. If that period commences before I receive documents under FOI from Housing ACT, I will be denied the opportunity to make informed submissions on relevant material before a decision on the development application is made. This is particularly significant in light of the serious concerns I have about Housing ACT's conduct in connection with the proposed development.

Concerns about ACTPLA's conduct

I have been disappointed with ACTPLA's handling of the matter, and its conduct has not reflected the necessary degree of independence, nor familiarity with the requirements of its own legislation.

First of all, ACTPLA should not have permitted Housing ACT to lodge the development application. ACTPLA also failed to make the purported waste solution approval public, and only agreed to do so after I made enquiries about it.

When I provided representations during the first public notification period, I advised ACTPLA that I was waiting for FOI documents from TCCS and Housing ACT, and requested an extension to provide comments on those documents after I received them. Despite multiple follow ups, I have still not received a response to this request.

I also requested copies of entity advices received by ACTPLA as part of the entity referral process (by which other government agencies provide feedback on the development proposal). While I was provided with copies of some entity advices, I was told that ACTPLA's practice is not to make copies of TCCS' entity advices public, apparently at the request of TCCS. I was also told that the second public notification period was about to commence.

Both aspects of this advice were contrary to legislative requirements. All entity advices are required to be made public, and the second public notification period can only commence after ACTPLA publishes a statement by Housing ACT, addressing issues raised in entity advices and in public submissions lodged during the first public notification period (see ss 179 and 500 of the Planning Act 2023 (ACT)). It was only after I brought this to ACTPLA's attention that I was provided with the TCCS entity advice. I was also advised that the second public notification period would not be commencing until after Housing ACT had provided the necessary statement and it had been made publicly available (I attach a relevant chain of email correspondence).

In light of all the issues outlined above, I have very little confidence that the ACT Government will ensure compliance with mandatory planning requirements in reaching its decision, nor that a decision will be made fairly and lawfully. The news that I may now be denied the right to independent merits review of any decision makes me even more concerned.