

Standing Committee on Planning and Environment
ACT Legislative Assembly Committee Office GPO Box 1020
Canberra ACT 2601

RE COMMENTS ON THE PLANNING SYSTEM REFORM PROJECT AUGUST 2006

In July 2005 the Conservation Council prepared *Sustainability, strategic planning, preserving ecological diversity and environmental impact assessment in the ACT* a submission to the ACTPLA Planning System Reform Project. That document discussed a number of issues of concern to the Council and our membership with reference to some recent major planning decisions as case studies. That document discussed a number of principles and proposed amendments to strengthen the environmental aspects of planning in the ACT, in particular SEA and EIS. The comments below should be read in context with the submission of July 2005.

The section below contains comments on the draft Planning and Development Bill 2006 in sequential order. Then some aspects of the proposed changes to the Territory Plan are discussed. We note that the Planning Reform process is not complete at this stage and in particular further work will be undertaken to restructure and rewrite the TP. We expect to engage in this process and provide input into ways to improve the TP.

Planning and Development Bill 2006 - comments

- Chapter 2 Main objects and important concepts
- 6 Main object of the Act – to provide a planning and land system that contributes to the orderly and sustainable development of the ACT -
- (a) consistently with the social, environmental and economic aspirations of the people of the ACT: and
 - (b) in accordance with sound financial principles
- The object refers to both economic aspirations and financial principles, resulting in greater weighting to those aspects.
Suggest remove either reference in (a) or (b)
- 8 Meaning of Sustainable development **sustainable development** means the effective integration of social, economic and environmental considerations in decision-making processes, achievable through implementation of the following principles;
- (a) the precautionary principle
 - (b) the intergenerational equity principle;
 - (c) conservation of biological and ecological integrity;
 - (d) appropriate valuation and pricing of environmental resources.

Support the inclusion of these principles. *People, Place, Prosperity* the ACT Government's policy for sustainability also

identifies the principles of empowering people and engaging the community. Planning legislation could benefit from the inclusion of these principles.

Prefer use of the term ecologically sustainable development which is clearer and better defined

Part 3.2

Functions of planning and land authority
Includes: (1)(n)to ensure community consultation and participation in planning decisions

Good – see comments below where legislation could strength this

Part 4.3

Land Agency board – lists expertise that the Minister must try to ensure are represented among the members appointed

We recommend that this be expanded to include environment/ ecology to provide coverage of that aspects of sustainable development

5.1

Main object of the Territory Plan is completely human centric

Could add – to ensure that the planning and development of the ACT provides for the preservation and enhancement of current ecological integrity

5.2

The function of the statement of strategic directions is to guide EIS, Planning Reports and SEA.

Therefore 51 (1) “should” include principles for sustainable development, rather than “may”

Div 5.3.5

Minister may refer the draft legislation to an appropriate committee of the Legislative Assembly

Disagree – draft variations should continue to be referred to the Committee. Committee involvement provides a level of independent review that the planning system would not otherwise achieve. There are many examples where the Committee process has made constructive recommendations that improve planning outcomes.

If the concept of a “technical” amendments (part 5.4) is adopted then that class of variation would not need to be referred to the Committee

Part 5.4

Technical amendment – includes a variation that only changes a code – no public consultation required

Establishment of, and changes to, codes should be subject to public consultation. This is even more crucial if the proposal to remove third party appeal rights is adopted.

Part 5.6
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Planning reports and strategic environmental assessment
Strategic environmental assessment is a comprehensive environmental assessment, suited to proposals in relation to major policy matters rather than individual development proposals

Examples of when SEA may be prepared

1. major policy initiative
2. major plan variation
3. urban release program

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Strongly support the inclusion of SEA in planning process
“if the Minister directs” or if authority determines it is “necessary or convenient”

95

We strongly encourage the setting of some minimum triggers for SEA

- o major planning study, e.g. Molonglo Valley
 - o transportation strategies e.g. Sustainable transport plan,
 - o urban planning/infrastructure planning – e.g. Spatial Plan
- Review of the Territory Plan – must prepare a SEA

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Support

Minimum content of SEA to be prescribed by regulation

We would prefer the minimum requirements to be in the Act and further guidance on content be in the regulations. See below for suggested minimum content.

In addition, the following minimum requirements should be placed in the Act:

- o that SEA should comply with ESD principles
- o participation/consultation - if linked to TP variation (95) then use TP statutory process, otherwise (92) public consultation on scoping and minimum six weeks for public consultation on draft document
- o requirement that authority must consider any written comments/representations
- o requirements for what the Minister or ACTPLA does with an SEA once one has been completed – must take into account recommendations; must report on response; make report publicly available

Suggested minimum content (drawn from the minimum information requirements set out by the EU for their equivalent

to the proposed SEA process)

- (a) the contents of the plan or programme and its main objectives;
- (b) A description of the 'zero-option' and reasonable alternatives (such as alternative types of development or alternative locations for development), including any modifications or mitigation measures considered, of achieving the objectives of the plan or programme;
- (c) the environmental characteristics of any area likely to be significantly affected by the plan or programme and its reasonable alternatives including, in particular, those relating to any areas of particular environmental importance
- (d) any existing environmental problems which are relevant to the plan or programme and its reasonable alternatives;
- (e) the likely significant effects of implementing the plan or programme and its reasonable alternatives on the environment, comprising those on the areas mentioned under c, including the consideration of secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary, positive and negative effects ;
- (f) any alternative ways of achieving the objectives of the plan or programme which have been considered during its preparation (such as alternative types of development or alternative locations for development) and the reasons for not adopting these alternatives;
- (g) the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (h) any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information (included in (b) and (ha))
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (ha) a statement outlining how the assessment was undertaken and the reasons for not adopting the alternatives considered;
- (hb) a non-technical summary of the information provided under the above headings.

Part 5.7	Review of Territory Plan As above support 95 requirement to prepare a SEA in relation to review of TP
Chapter 6	Planning strategy Again, main object is weighted with economic and fiscal
Chapter 7	Development approvals
7.2.3	Should (b) and (c) also apply to code track ?
111 (1)	

7.2.3 111 (3)	Merit approval must be consistent with Conservator advice – good
7.2.4 116	Minister may declare impact track applicable Good - Support the Minister for planning having power to require impact assessment, this power should also sit with Minister responsible for environment
120	Add – decision maker must consider any relevant SEA
121	Notification and third-party appeal rights for impact track good
7.3.5	Ministerial call-in power Do not support - The call-in power is unnecessary for three key reasons: • the call-in power does not provide adequate checks and balances; • the use of the call-in power reduces the authority of our planning processes; and • it leaves open capacity for undue influence by sectional interests.
Chapter 8	Environmental impact statements and inquiries General comment - mostly an improved process compared with current PA process. However, two elements that require further attention are public consultation on draft document and transparency around final decision making. There are also a number of developments that currently trigger a PA under Appendix II of the Territory Plan, for example a building, car park with greater than 50 spaces, a new major road or widening of existing road within the Mountains, Bushlands and River corridor land use. This provides an important opportunity for comment from the conservation community on proposed developments within the conservation estate. We are very keen to see this retained. We understand that the TP will set out the assessment tracks applicable to each land use zone and therefore it would be possible to retain this process by placing such developments in the Conservation zone in the impact assessment track.
187 (2)	Scoping of EIS Support scoping, including public notification. To further ensure that critical issues are encompassed in scoping, document

should be sent to Flora and Fauna committee who have a statutory role with regard to nominated flora, fauna and ecological communities.

Specific guidelines for ecological assessments should be developed e.g. guidelines for flora and fauna surveys. To ensure these are adequately carried out.

EIS should include an assessment of proposed development in terms of the cumulative impact.

Members of the public must have the opportunity to comment on an EIS prior to decisions made/approval given for development. Appears to be absent for the process as set out in Part 8.2. A minimum of 6 weeks should be given to allow adequate public consultation. Also, needs to be a requirement for the authority to take into account comments made during this period and (current practice for DAs); a requirement for the Authority to make publicly available a statement of reasons for significant planning decisions.

There is some benefit in having the public consultation conducted prior to the proponent finalising the EIS in that it gives opportunity for dialogue and identification of possible solutions.

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Minister may present EIS to Legislative Assembly

Transparency around final decisions on EIS is important – currently Minister must provide a written report evaluating the EIS and make that report available to the Assembly and Public.

Final EIS should be publicly available along with a written report evaluating the EIS, within an appropriate timeframe. Part 8.3 199 only allows 15 working days after the final EIS is given to the Minister for the Minister to establish an inquiry panel. The EIS should be made public at least 5 working days before this time expires to allow members of the public to make representations to the Minister to establish a panel of inquiry if they are not satisfied that the EIS adequately addresses the issues set out in the scoping document.

EIS where site selection involved – in some cases this may be the preferred process for identifying the best site (or least worst) for a development. May be that SEA or EIS is used.

Requirements allowing round table conferencing particularly where site selection is involved. This could be a useful process to reach a satisfactory outcome for all parties. This process has

been suggested by number of community and government representatives as a process that could help to avoid community conflict that has arisen in the past, for example with the residential development at East O'Malley.

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Need to clarify

Authority to prepare list of EIS consultants? Or people to be consulted ?

Support preparation of list of suitable consultants and possible certification of consultants should be explored with professional body like ANZ Environment Institute.

Part 9.7 245 Land management agreements

This is an important conservation mechanism which would be greatly strengthened by making the conservation conditions publicly available. The Land Bill should address this matter by requiring the conservation details to be made available upon request.

Chapter 10 Management of public land
276 Reserved areas –public land

Could add to the list: wildlife corridor

Chapter 13 374 definition of material detriment

The Conservation Council has concerns that the definition of “materially affected” proposed by the Planning Reform System will potentially undermine third party enforcement

Liberal third party enforcement processes – where in place – have not opened a floodgate of litigation and their existence and occasional use have value in ensuring compliance with environmental laws and in testing environmental best practice.

Schedule 4 EIS required for venue where motor sports held, if hold 2,000
4.2 people

Currently any proposal for motor sports venue is required to prepare PA under Appendix II of TP, regardless of crowd capacity. This should be retained as the impacts of a motor sports venue may not necessarily relate to the crowd capacity.

Zoning

B12 Hills, Ridges, Buffers – to become PR3 Metropolitan Landscape Zone. “Makes the distinction between landscape setting of CNP and the conservation requirements of Namadgi National Park”.

Many of the groups and individuals represented by the Conservation Council would be greatly upset by this proposal which ignore the significant conservation and ecological value of many of the units of CNP. For example Mulligan's Flat and Goorooyaroo represent the largest area of the endangered ecological community of yellow box red gum woodland in public reserve in Australia. Several of CNP units contain endangered ecological communities such as natural temperate grassland and/or threatened and vulnerable species. Several also have an important connectivity / corridor function.

Criteria – exempt development

41 a water tank that is built in front of the residence is not exempt.

Disagree, a visible water tank is a visible demonstration of improved urban sustainability and a visible demonstration of ACT government water policy in action.

Community land use

Social impact assessment should be carried out where there are proposals to changes or reduce the community land use or to carry out substantial development in key areas for community land use e.g. central Canberra.