



22 April 2014

Legislative Assembly
Standing Committee on Planning, Environment and Territory
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Attention: Mr Mick Gentleman MLA
committees@parliament.act.gov.au

Dear Mr Gentleman

PLANNING AND DEVELOPMENT (PROJECT FACILITATION) AMENDMENT BILL 2014

The National Trust is concerned with the haste with which this bill is being processed and what appears to be inadequate protection of ACT Heritage. The extremely limited time has meant lack of opportunity to seek clarification of the detail and as per previous correspondence we seek a more reasonable time for consultation and review of this important legislation.

While it appears that there is some consideration of public benefit there are some concerns and comments which are outlined below.

1. RESTRICTION ON HERITAGE

Restriction of operation of certain acts (Division 5.3A.3 cl 85N-Q) includes the Act Heritage Act 2004 which can be made not a relevant consideration for a decision in relation to the DA in a special precinct, so ACT Heritage Council advice will not be sought.

This means no protection of ACT Heritage that has been nominated and/or being assessed and/or provisionally registered.

We note clarity is lacking about Heritage issues for places already on the ACT Heritage Register if they are in special precincts, as no Council advice will be sought.

We are all aware that due to lack of resources there is a substantial back log of nominations which now have no protection if within a special declared precinct.

The comment that this is not a significant departure from the existing planning scheme is misleading as currently advice has to be sought, considered and clear reasons provided on the outcome, even for nominated places. Future provisions have no requirement to even seek advice.

Where the executive makes decisions on heritage nominations (by not needing to take this into consideration) then we do not consider this transparent and efficient or based on objective consideration.

2. CANCELLATION ISSUE

Under the Heritage Legislation Amendment Bill the Minister would be able to cancel existing registrations. We do not have detailed information about any changes to that Bill on this or other aspects to which the Trust drew MLAs' attention last year.

3. PROPOSED TIMEFRAME

The time frames for both the special precincts declaration and the restriction declaration are likely to cause significant difficulties for people and bodies seeking to understand their scope and to respond. This will be

exacerbated if a major project and/or DAs are open concurrently. This Act is intended to apply to projects of major public importance which usually means they are more complex with complex issues to address. A restricted time frame can mean inadequate assessment to the detriment of heritage and less time for the community to comment.

4. SPECIAL PRECINCTS

There is no clear understanding on how far reaching a special precinct can be defined and the Bill provides no limits and no methodology. There has been discussion of Northbourne avenue and the light rail but can this include blocks/sections and even suburbs adjacent to Northbourne Avenue.

There is also no clear understanding to what extent these boundaries can be adjusted by technical amendment or special amendment but there appears to be no limits.

There are also opportunities to rezone land but controls on such are unclear.

We note that the view of the Heritage council needs to be sought for special precinct declaration.

5. APPEAL RIGHTS

There is no right of appeal to ACAT which denies natural justice for affected parties. The right of appeal to the Supreme Court as a matter of law is not the same and expensive. The exclusion of ADJR is a great concern. When the Executive puts its conclusions it places the decisions in an entirely political context. It does not allow its reasons for decision to be assessed, however infrequently, by impartial judgment of their quality and integrity.

6. EXECUTIVE DECISIONS

We note the Executive must be satisfied that the special precinct area would achieve substantial public benefit and there is an opportunity for public comment which is supported.

However, simultaneous DA, public consultation and EIS can mean decisions have been made for the DA before due public comment and input to a proposal is even submitted for consideration. Also the EIS may overrule a DA once completed and therefore waste time and resources.

For significant projects declaration it appears that the consultation notice includes comments from NCA but no other entities such as the ACT Heritage Council unless specifically prescribed. For special precincts declaration the Council is to be consulted at that first stage only if a restriction declaration is simultaneously proposed. In these circumstances any serious consideration of heritage issues will be compromised. There appears to be no provision to consult the Heritage Council about special amendments.

The effect of a disallowable instrument is a poor outcome when the Assembly majority will hold firm and not let a reasonable minority view to be considered effectively and no appeal.

7. ACT HERITAGE ACT

The ACT Heritage Act review made many comments and recommendations but few have been considered. Proposed amendments on some aspects were tabled last year and when concerns were raised nothing progressed. We now have further subsequent and partly related changes to the Heritage Act without consideration of the broader picture. We do not consider this an effective or reasonable way to consider ACT Heritage.

8. CALL IN POWERS

It is interesting to note that there has been discussion of deleting call in powers in the debate but nothing is within the legislation related to this. The call in powers in the Planning and Development Act should be reviewed when this Bill and the Heritage Act amendments are being settled.

9. CONCLUSION

The above has been prepared in a limited time without the opportunity to discuss, clarify and scrutinize the detail. The original timetable for this Bill did not sit well with any view that public consultation in planning matters was important, and the concession now given dismisses public concern. This major legislation is complex and presented without convincing argument for its necessity. While there may be benefits to the proposals there are concerns that need to be clarified by a reasonable and sensible consultation process. It is difficult to see that the quality of urban planning in the ACT will be markedly improved by some of the requirements in this Bill.

We do not support the proposals as we understand them.

Yours faithfully

A handwritten signature in black ink, appearing to read 'E J Martin', with a long, sweeping horizontal line extending to the left.

Eric J Martin, AM

cc: Ms Katy Gallagher MLA
Mr Alistair Coe MLA
Dr Chris Bourke MLA
Mr Andrew Wall MLA