

Submission to the Legislative Assembly Standing Committee on Planning, Environment and Territory and Municipal Services Inquiry into the Planning and Development (Project Facilitation) Bill 2014

Introduction

I make this submission as a private citizen who has a strong interest in soundly- based, accountable planning and development in ACT, particularly involving consultation with residents who have an interest that is directly or indirectly affected by particular planning and development decisions. I am concerned that this inquiry is of very short duration, giving little time for in-depth consideration of the likely impact of this far-reaching bill, which proposes to make major changes to the existing legislation.

I've noted that this point has been made strongly by representatives of organisations with a substantial interest in the effects of the bill, such as the Woden Valley Community Council and the National Trust.

The key provisions of the Bill

As the Opposition spokesman Alistair Coe has said in his speech on 8 April 2014, there are four main elements of the bill.

The first allows the executive to vary the territory plan for a special precinct area variation. The bill would remove third party appeal rights to the ACAT on developments in that precinct. It would also remove AD(JR) appeals to the Supreme Court, though not appeals in the much more limited area of matters of law. The bill would also allow a restriction declaration to be made that has the effect that many of the provisions in the Heritage Act and the Tree Protection Act do not apply to the precinct. These are very substantial changes to the existing law, which strongly favor the executive.

The second element is the provisions allowing the government of the day to declare certain development proposals as projects of major significance to the Territory. Again, under these provisions there would be no third party merit review by ACAT or AD(JR) review by the Supreme Court - only appeal to the Court as a matter of law. Special precinct variations and project of major significance declarations are to be made by disallowable declarations. Although such instruments can be overturned by the Assembly, if the government of the day has a majority in the Assembly it is unlikely that the minister's declaration will be disallowed.

The third element of the bill allows for a development application to be notified and assessed at the same time as the territory plan variation is considered and determined, thus saving a proponent inconvenient waiting time. However, as Dr Jenny Stewart, Chairwoman of the Woden Valley Community Council has pointed out in her letter to the Canberra Times on 8 April 2014, 'This means that decision-making in relation to designated projects has been removed from the planners planners and resides solely with the political executive.'----- 'Once made the effects of bad decisions linger.'

The fourth element of the bill is the optional ability of the proponent to lodge a development application with a draft environmental impact statement, allowing public consultation on the draft EIS at the same time as the the public notification of the development application. This could save time for the proponent.

Recommendation - insertion of a Sunset Clause

The ways in which the legislation may be used by governments could vary greatly. If used in good faith, in the public interest, it may be that there will be benefits for the people of the ACT, given that this procedure replaces the 'calling in power in the present law. However, if consultation is not genuine, or the considered views of those affected by designated projects or precincts are disregarded and the government of the day simply uses its numbers in the Assembly to push through its project or designated precinct the outcome for Territory residents, the natural environment, the built heritage or an individual or firm could be adverse.

At this time, before the legislation has been passed, it is difficult to foresee all the possible outcomes of its implementation. However, in several years time we will have had a good deal of experience with the application of the legislation. Given that it represents a very substantial change in the ACT's established planning legislation, I believe there is a very good case for inserting a sunset clause, to expire in four or five years time, so that the next Assembly will automatically review the operation of the Act, in light of the experience of its strengths and weaknesses over that period.

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