LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
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Submission Cover Sheet

Inquiry into Planning Bill 2022

Submission Number: 57

Date Authorised for Publication: 22 November 2022

Submission to

The ACT Assembly's Standing Committee on Planning,

Transport and City Services

Inquiry on

The Planning Bill 2022

Submission from:
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[redacted]

My background relevant to the Inquiry

I am making this submission as an individual and based on my extensive knowledge of planning, leasing, land management and the management of the ACT both pre and post Self Government. This was gained over 30 years' work experience including:

- the development and management of sport, recreation and cultural facilities and programs,
- finance arrangements and development of the Territory Plan at Self Government
- ACT housing review
- planning facilities for the Sydney Olympics
- leasing and planning knowledge gained in various iterations of the "Planning Authority"; and
- planning and transport advisor to a Minister for Planning.

Post retirement I was Woden Valley Community Council Planning Officer. I would welcome an opportunity to present in person to the Committee.

My comments on the Bill and associated issues are as follows:

Part 2.1.7

Objects of the Act

(1) (a)

While an outcomes focussed planning system is welcomed, the issues surrounding implementation of that approach are enormous. The focus on a plethora of codes and restrictions in *the Planning and Development Act 2007* certainly was far too complex and formulaic. For various reasons eg assessment of the particular Development Application (DA) and not how it interacts in its setting, its siting re solar access, poor compliance and no evaluation mandated, some awful developments have ensued. However, at least in theory, a mix of outcomes and rules should provide better results.

It is recognised that further detail on the assessment criteria are provided in the Draft Territory Plan, recently released, and further consideration of how the new system will work needs to be made in the context of that Plan.

There are major pitfalls with an outcomes focussed approach. One of the major ones being a sufficiently skilled and motivated workforce to assess against the outcomes. It should not become a tick and flick exercise and staff assessing must be held accountable.

Past performance in DA assessments does not give much optimism for achieving good development under this model. To a large extent it depends on the commitment to the outcomes of both proponents and assessors.

Existing legislated outcomes, such as “innovative” and “complying’ with the character of an area, have certainly not been taken into account in many DA approvals. While the merits of requiring a development to fit in to the character of a suburb may be questionable, performance against this requirement has been woeful. I participated with a major appeal to ACAT where we won partly on the basis that the townhouses did not meet the character of surrounding houses.

Performance assessment against outcomes can be subjective, vaguely expressed and variously interpreted. Unless an outcome focussed approach is well defined and applied, it may increase the prospect of increased appeals to ACAT making it harder to argue against less specific criterion. Experience elsewhere (Queensland) has shown with this type of change that it has neither reduced complexity not led to better outcomes. That is why it is important to build in evaluation of this new process into the Bill before its effects are too widespread.

(c)

Scheme for Community participation

Community participation is an essential and important object of the Act and is currently a source of much discontent both within the community and with proponents from different perspectives. I discuss this later in my submission.

(2) (b)

Promote certainty of processes and scope for innovation.

As raised above performance against these objects must be evaluated to ensure they are not just aspirational.

(3)

Matters which must be considered

There is no reference to sport and recreation specifically in this list. Given the importance of access to these services, especially in the urban environment, and the development pressures on such spaces, it is important that they also be highlighted in the Bill particularly where there are already references to "cultural" and 'heritage". In fact throughout the Bill generally where cultural and social is referenced, so should recreation be included. Recreation is in the objects of the Territory Plan so it should be included in this Bill.

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Recommendation 1

That an evaluation clause be introduced to the Bill to require for a specific period of time, eg every 5 years, that a sample of approved and completed within the last 12 months DAs be assessed against performance in achieving the Bill's objects.

Recommendation 2

That "recreation" be added to (3) (a) under *matters which must be considered* and elsewhere as appropriate in the bill eg 10.2.2 (1) and (2) where cultural is referenced.

2.2.11 and 2.2.12

Principles of good consultation and Guidelines

There has been considerable community discontent with the current consultation processes undertaken by the Authority. Most is undertaken by consultants and there is concern that comments are ignored or watered down. There is a general feeling that often, unless the feedback is what is desired, then it vanishes. A way to address this discontent is to emphasise the need for responses to consultation. Comments must be given back with a response ie "not relevant', "agreed", "no because….". This could be included in the Minister's Guidelines.

The Bill attempts to rectify much of that discontent and defines some principles of good community consultation. It specifies that the Minister **must** make guidelines about principles of good consultation and how the principles are to be implement. Yet the guidelines are not included in the Bill nor is there any time limit for when the Minister must make them by. It is noted that the Guidelines are a Notifiable Instrument.

Recommendation 3
(a)That the principle of feedback on consultation be strengthen to ensure all feedback addresses fully issues raised in the consultation explaining why issues are not accepted and this be included in the Minister's Guidelines.

(b) That it be inserted in the Bill that the Minister's guidelines of good community consultation be notified to the Assembly within 6 months of the Bill being enacted

Chapter 5
Territory Plan

The inclusion of district plans is welcome as a mechanism to provide finer grain planning. A "one size" plan doesn't fit all. However as raised below planning variations for a single block is not the way to go either.

The Bill sets out the processes for varying the Territory Plan. I have two major concerns. One is apparently already a practice under current legislation, allowing specific block variations applications by lessees and the other the proposed Minor Variations which avoid public and Assembly scrutiny.

The Planning Authority states (*Overview of the ACT Planning system and Territory Plan*). "*that the Territory Plan provides the policy framework for the administration of planning in the ACT*". It also states that "*variations* (to the Plan) *are used to make significant policy changes to the Plan that are consistent with strategic planning policy".*

This is consistent with the intent of the Plan to set the broad land use policy in the ACT with overlays, such as Public Land, to fine tune more specific use. It is necessary to have zoning to enable planning and provision of relevant infrastructure as required in different zones. It also provides certainty to lessees on the types of use permitted in an area and defines the maximum broad land use parameters permitted. It defines the maximum use for any lease variation.

However, it now is practice for Variations to be also made for specific sites. Indeed the Authority states (in the Overview) that Variations can be made to "facilitate suitable development on a site" and the Bill goes into extensive detail on how this is considered. The Bill allows a lessee to initiate a variation for their specific block. Refusal can be appealed to the Administrative Review Tribunal (ACAT). The Bill does not set out the grounds for refusal of such requests. It is inconsistent with the intent of the Plan to allow for block specific Variations nor lessee specific block initiated Variations. Not only does it fly in the face of land use planning, but it creates a resource intensive work load for the assessors, plus costly appeals to ACAT.

Technical Variations, which came into effect post 2002 but before the 2007 Act, were intended to allow for small changes to the plan as listed in the Act. It meant that if a boundary had to be changed, for instance to allow for a bike path to be constructed, or there was a small overhang into another use, then a technical variation could be made without the drawn out process of the full variation. It did not permit policy variations. However, an abuse of the technical variation process occurred when changing in the Plan the definition of community land, which allow supported housing (but not other housing), to change to include social housing. This was undertaken as a technical variation. So large areas of land were then able to be used for social housing which were not previously available. Social housing is not "supported housing" which requires onsite support for residents. The community and the Assembly were not aware of this as it was done as technical variation. While the outcome may be beneficial, the fact that no one other than the Government knew nor had the chance to comment, was not in keeping with the intent of technical variations.

Indeed, the Authority's Overview document states technical amendments allow it to do minor policy updates. That sounds the same as "changes"to policies.

The Bill allows for Technical variations to be now called minor variations, some requiring no consultation others which require some consultation but no Assembly scruitiny. Of particular concern is Part 5.3 section 82 (2) (a)changing the boundary of a zone and (2) (c) clarify language but doesn't change substance. These provisions are not sufficiently limited and allow for enchroachment eg on adjoining facilites, such as carparking extending onto an oval to service an adjoining facility on leased land. This may be considered not changing the substance but in effect it is reducing the capacity of the oval for

other uses. This provision will become more utilised as pressure grows on inner open space. It is desirable that variations listed in (2) (a) and (2) (b) be at least referred to the Assembly for consideration.

The change in description from technical to minor is not necessary and encourages the idea that policy and boundaries can change.

Recommendation 4:

(a) retain the name technical variations to stress and reinforce the intent of the provision

(b) either change the provisions for 2 (a) and 2 (b) to be referred to the Assembly or at least in case of boundaries strongly restrict its use. There is reference in the Bill that it is defined in regulation but I have yet to find this.

(c) ensure no policy change or clarification without referral to the Assembly as per major variations.

5.2.1
54
Interested person
Land classified as Public Land in the Territory plan was classified as such to preserve the public interest in the area. Decisions on this land should not be made unless the ACT community can participate in those decisions.

Recommendation 5
Insert in the Bill that for an area classified as Public land in the Territory Plan, the ACT community be listed as “an interested person”

5.2.2
56 (2)
Recommendation 6
Insert after (d) If the area is Public Land then it must comply with the Land Management Plan and the Public Land objectives for the area

5.2.3
60
Recommendation 7
Add if Public Land consult with the community

7.3.1
Prohibited development
156 (2)
As it stands this allows for enchroachment onto land classified as Public Land. It does not protect Urban Public Land from being whittled away.

Recommendation 8
Specify that it does not allow for enchroachment on land classified a Public Land

7.5.4
Public notification
Recommendation 9
For Public Land add "community"

7.6.1
86
Restrictions on development approval
(1)
As (b) refers to consistency with the land management plan for rural land, so should a clause be inserted here with the same provision for land management plans for Public Land

Recommendation 10
Insert "the relevant land management plan for Urban Public Land."

Additional General Comments

Housing Affordability
There is a major cause of the increase in the cost of residential leases which doesn't get any comment, probably because of unawareness of the good intent of the leasehold system and the sad merging of it with freehold systems in other jurisdictions. The ACT's leasehold system had its origins in opposition

to land speculation and there is a great need to revert to that principle as far as possible.

Under the legislation at Self Government, undeveloped leases could not be mortgaged except for the construction of the development on that lease. Intense lobbying by the legal profession and developers made sure that provision was deleted in the Act and now undeveloped leases have increased in value partly due to their security for mortgages elsewhere. In addition, it was a requirement that undeveloped leased land could not be sold. If you bought it you had to develop it or return it to the "selling authority'. While this was simple pre Self Government, it has become more complex since there are a range of selling authorities and developers have bought land in bulk. However there are growing instances of land banking with undeveloped blocks being held and subsequently sold at a much higher value. This all adds to the cost of land. There are instances in my own inner suburb where residential blocks have been vacant for 10 years.

Territory Priority Projects
The current Call in system where the Minister decided a DA works well. The Minister is still accountable via a notifiable instrument advising the Assembly of the decision. The concept of Territory Priority Projects is fraught with possibilities to avid community and Assembly consideration. Eg if it was decided to build a convention centre on the Olympic pool or Albert Hall sites, then the Minister could just declare it a PIP and proceed without any consultation or referral to the Assembly.

Pre DA Consultation
The Bill removes the requirement for pre DA consultation. If there is a commitment to improving consultation then this is not in keeping with that. The reason given to remove it was that it didn't work. Well it can work if feedback on comments is given to participants by proponents on the same basis as outlined above . This could also be included in the Minister's guidelines

Additional Recommendations

(a) That the Bill be strengthened to ensure development requirements of blocks and sale of undeveloped blocks be strictly enforced

(b)That the provision not allow mortgages on undeveloped blocks for purposes other than work specific to that blocks to reintroduced.

(C)That the current Ministerial Call in Provisions be retained instead of the new provision.

(d)That pre DA consultation be retained and proponent feedback on comments be required under the Ministerial guidelines