



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
Ms Jo Clay MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),
Mr Mark Parton MLA

Submission Cover Sheet

Inquiry into Planning Bill 2022

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CANBERRA PLANNING ACTION GROUP

Submission to Standing Committee on Planning, Transport and City Services Inquiry on ACT Planning Bill

Established in 2019, the Canberra Planning Action Group (CPAG) has networked extensively at a community level regarding planning issues across the ACT. CPAG has also published a series of articles regarding planning issues in the ACT on its website – <https://www.canberraplanningactiongroup.com/blog> - authored by professionals and community representatives with a deep interest in the subject.

CPAG has endeavoured to consult widely, in the limited time available, re the Draft ACT Planning Bill – contributors to this document are listed at the end. However, CPAG remains unconvinced that the ACT Planning Authority, responsible for the consultation process will either listen to or adjust its views in light of the serious, well-substantiated arguments put to them.

It is also a matter of great concern to CPAG that the consultation processes regarding this ACT Planning Bill leaves most citizens uninformed about the proposed new ACT Planning Act's implications for them, their families and friends, and future generations of Canberrans.

The terms of Reference for the Standing Committee on Planning, Transport and City Services (Standing Committee) appear to be very open. CPAG therefore strongly urges the Standing Committee to consider the basis upon which community input regarding this Planning Bill has been sought. Given the level of public scepticism toward the quality of democracy in Australia and the ACT, our National Capital, the new Planning Bill needs to pass the test of genuine widespread consultation and incorporation of views put forward by the community it serves.

CPAG considers that the arguments and analysis contained in this submission urgently need the widest possible distribution across the government and the Legislative Assembly. Accordingly, this analysis is to be circulated to other community organisations to encourage them to review the Draft ACT Planning Bill which is before the Standing Committee, and the implications of the Bill in view of the just released Draft Territory Plan and Draft District Strategies.

CPAG strongly urges the Standing Committee to acknowledge the flaws in this Draft Bill and to ensure that genuine transparency and community engagement are key points to be included within any such final piece of legislation.

STARTING POINT FOR CPAG REVIEW

The starting point for our review of the proposed legislation was that it is reasonable to expect that:

- Those people in charge of putting together the new planning bill are 'professionals' and 'experts' in the field, presumably on full pay or expensive contract.
- These people, whether involved in the over-sighting or the actual drafting of the bill, are aware of *best practice* as exercised in other jurisdictions.

However, we are concerned these two reasonable expectations are not being met in the present planning system review. That is, despite being professionals and despite being aware of best practice, the result is a bill that is the exact opposite — unprofessional and bad practice.

A key indication of such bias in the Bill is in the ‘transitional’ arrangements for the new Territory Plan [(back side of the Bill). *Is this necessary?*] A glaring omission is the need for a “supporting” report, which would be a normal requirement for a “major plan amendment”. Such a report should identify precisely what changes are proposed and WHY.

This leads to the conclusion that:

- The Bill is **poorly drafted**. Without evidence **to the contrary, this suggests that the Bill** best accommodates vested interests, normalises really inappropriate planning processes and decisions, and sidelines environmental and community concerns.
- The planning review has been a **cynical** exercise to **advance** the government’s aspirations on light rail and urban intensification, while drastically limiting oversight by the ACT Legislative Assembly and the community.

PROPOSED ACTIONS in relation to the Draft Bill

CPAG proposes that the Standing Committee properly consider and accept the detailed analysis of the proposed Planning Bill 2022 submitted to the Standing Committee by Richard Johnston, a qualified architect and town planner. Johnston is highly experienced in statutory planning work in the ACT, formerly as a senior planner in the National Capital Development Commission (1980-88) and thereafter as a Senior Executive Planner in the ACT Planning Authority (1989-2006).

Secondly, CPAG proposes that the Bill as presently drafted should be withdrawn, or, at the very least, amended to include the following:

- ALL requirements of Section 59 [re "major plan amendments", specifically the ‘supporting report’] in Section 605 [transitional arrangements for the new Territory Plan];
- The ‘supporting report’ to cover ALL changes from the current Territory Plan, including those where provisions are to be in ‘supporting material’, rather than the new Territory Plan;
- The ‘supporting report’ states WHY ALL changes from the current Territory Plan are being proposed;
- The ‘supporting report’ responds meaningfully to ALL issues raised in community consultation, stating clearly WHY changes have NOT been made in response to these issues;

Furthermore,

- The Planning Strategy and the District Strategies should be referred to the Assembly as per ‘major plan amendments’ (to enable the relevant Committee to determine whether it should hold an inquiry);

- Relevant Community Councils should be given a specific role in advising on District Strategies;
- Demonstrably strengthened and improved ‘principles of good consultation’ should be required [e.g., as per the South Australian planning legislation];
- ‘Pre-Development Application Community Consultation’ should be reinstated and required to be conducted within the same timeframe as consideration by the Design Review Panel, not after the Panel has signed off on the proposal. [Well-intentioned proponents state that this siloed feedback is the major problem with the current process];
- Properly independent decision-making should be required on development applications where the proposal is a significant change to existing arrangements and where substantial numbers of objections (e.g., 5+) have been lodged, by an independent body such as the former Commissioner for Land & Planning or planning panels as per NSW;
- Such independent decision-making should be conducted in public, i.e., all interested parties should be able to attend [for much greater transparency, in an attempt to rebuild trust and confidence in the process]. and
- An independent commission, similar to the NT Planning Commission, should be established to set the strategic framework for integrated land use, transport and infrastructure planning in the ACT; and, to work with the community to deliver more sustainable and cost-effective outcomes for the community that reflect environmental and heritage values.

PROPOSED BILL UNLIKELY TO ACHIEVE ITS OBJECTIVES

All contributors to this paper point out that the bill, once approved, is unlikely to address the problems allegedly created by current legislation and planning instruments. This is because the Bill is poorly drafted and conceived, and hence, should not be passed.

CPAG wishes to highlight two central points; pertaining to matters already raised in previous submissions:

1. The actual history of planning approval has been misrepresented in order to create a justification for planning reform, and
2. The reform is unlikely to achieve its stated objectives.

In effect, the Bill initially misrepresents current planning legislation as the primary cause of a fictitious problem. The Bill then proposes measures which will not address said fictitious problem. More precisely put, the Bill is only able to address this fictitious problem because it gives unprecedented powers to the chief planner, whom it empowers simply to ignore alternative views. This is an extraordinary situation!

ACT GOVERNMENT AND ACTPLA ARE THE PROBLEM

Under the current legislation, the ACT Government and ACTPLA have long been able to manage planning to suit their own objectives and to do so at the expense of what might be considered good planning, as well as the wishes of the community.

A specific example of such management (manipulation?) was the then ACT Government’s endeavour in the late 1990s to make a direct grant of a whole suburb, Kinlyside, with

ACTPLA producing a detailed report supporting its development into semi-rural acre ridge blocks.

The absurdity of the report was highlighted by Tony Powell (former NCDC Commissioner), Professor Patrick Troy (noted urban planning academic) and Albert Oberdorf (former Director, ACT Private Enterprise Land Development Strategy) who, in separate but inter-related speeches, clinically exposed the report as a partisan attempt to (unsuccessfully) justify such development.

Interestingly, it was the ACT Labor Government that subsequently designated Kinlyside a protected area that would remain undeveloped under an environmental offsets plan associated with increased development in Gungahlin

Another prime example of the point made here is how the ACT Government and ACTPLA have ignored not only ACT community aspirations and planning principles, but the principles that they themselves set out in the ACT Spatial Plan. This incorporates key principles for making the ACT climate resilient, including its goal to provide Canberra's urban footprint with the equivalent benefits of a 30% tree canopy cover and 30% permeable surface.

The ACT Government and ACTPLA did this by turning projected office buildings in Gungahlin into flats and the intensive development along Northbourne Avenue simply in order to justify the high cost of light rail. In his paper *Transport for Canberra* – <http://www.cbchristensen.net/papers/2014/12/05/tunnel-vision-light-rail.html> – Carlton Christensen, notes this is not

“Just about creating a Frequent Network consisting of high-density transport corridors ... it is ultimately about re-engineering all of Canberra... “(T)he ACT Government’s new planning strategy ... outlines an approach to creating a more compact and sustainable city by concentrating new development along transport corridors defined in the Frequent Network.”

At this point, we see that *Transport for Canberra* envisages a truly fundamental transformation of Canberra's urban form in which *“increased density will help support more efficient public transport as well as vibrant neighborhood centres”*.

As referred to above, as well as ignoring ACT community aspirations and planning principles, this intensive development ignores the IPCC report on heat islands. Such masses of high-density housing force people to use air conditioners exuding hot air, producing a vicious cycle. Moreover, the new “roofscape” suburbs are also extensive urban heat islands, with large houses squeezed onto small blocks, roofs almost touching, and the rest covered in concrete driveways with little room for vegetation. Such dysfunctional suburbs are not limited to the ACT, but afflict all major Australian cities.

Rather than changing legislation, the ACT Government needs to firstly abandon its light rail centric planning focus and return to principles set out in *The ACT Spatial Plan* which incorporates key principles for making the ACT climate resilient – as the quotation below indicates:

“Higher density residential development will be promoted within the existing urban area, providing easy access between home and places of work, education, community services and cultural activities. Primarily this increased development will occur in Civic, along Northbourne Avenue, Constitution Avenue, in Barton and Kingston and around the town centres with limited change to existing suburban areas. People will enjoy a choice of housing type and location”.

Secondly, the ACT Government needs to provide support for the ACT Planning Authority by making it responsible to a properly independent body, such as in South Australia and Western Australia.

ACT PLANNING NEEDS OVERSIGHT NOT JUST CHANGED LEGISLATION

The key to good planning outcomes in the ACT is to reduce the power of the ACT Planning Authority by making it responsible to a properly independent body such as in the Northern Territory, South Australia and Western Australia.

We consider that the ACT Government should establish an independent commission similar to the NT Planning Commission to set the strategic framework for integrated land use, transport and infrastructure planning in the ACT, work with the community to deliver more sustainable and cost-effective outcomes for the community that reflect environmental and heritage values. Such a body would:

- Consult with the community to develop strategic plans and policies for inclusion in the ACT Spatial Plan and advise on significant development proposals; and
- Strengthen links between the Federal and ACT Environment Protection Authorities, ACT Heritage Council and Local Government Associations.

It should, as is the case with the NT Planning Commission, have seven members who can provide planning leadership and deliver professional, independent advice and include the chairpersons of the relevant ACT bodies with statutory decision-making powers for development, providing for a greater shared understanding of the aspirations of the planning system in delivering outcomes.

CONCLUSION

CPAG has consulted as widely as possible in analysing the draft ACT Planning Bill despite being constrained by a lack of explanatory documentation and no access to detailed government briefings. This analysis will be circulated to other community organisations to encourage them to review the draft Bill, which is before the Standing Committee, and, to consider the implications of the Bill in view of the just released Draft Territory Plan and Draft District Strategies.

Finally, CPAG strongly urges the Standing Committee of the ACT Legislative Assembly to acknowledge the flaws in this draft Bill, and to ensure that genuine transparency and community engagement are key points to be included within any such final piece of legislation.

Geoff Pryor

Convenor CPAG

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LIST OF CONTRIBUTORS – concerned residents of the ACT:

Rosemary Blemings



Beatrice Bodart-Bailey



Chris Braddick



Bruin Christensen



Anne Forrest



Albert Oberdorf



Geoff Pryor

