



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: 58

Date Authorised for Publication: 22 November
2022



Australia's property industry

Creating for Generations

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18 November 2022

Standing Committee on Planning Transport and City Services
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Inquiry into the Planning Bill 2022

The Property Council of Australia (ACT Division) welcomes the opportunity to make a submission to the Inquiry into the Planning Bill 2022.

The Property Council of Australia champions an industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

On behalf of our members, we provide the research and thought leadership to help decision-makers create vibrant communities, great cities and strong economies. We support smarter planning, better infrastructure, social and environmental sustainability, and globally competitive investment and tax settings which underpin the contribution our members make to the economic prosperity and social well-being of Australians.

The ACT Property sector is the second biggest in Canberra behind public and health services, employing 1 in 7 Canberrans – equating to nearly 40,000 direct and indirect jobs- which drives diversified economic growth and renewal across our city. Furthermore, our sector keeps the budget in the black, contributing more than 60 percent of government revenue, more than any other industry, funding schools, hospitals, municipal, community and government services.

PROSPERITY | JOBS | STRONG COMMUNITIES

As significant contributors to the economy and leaders in developing the Canberra of tomorrow, we seek to contribute to the Committee's inquiry into the Planning Bill 2022. Please find our submission attached. Should you have any questions regarding this submission do not hesitate to contact the office by email at act@propertycouncil.com.au.

Yours sincerely,



Adele Lausberg
Acting ACT Executive Director
Property Council of Australia

Submission to Standing Committee on Planning, Transport and City Services

Inquiry on Planning Bill 2022

November 2022

1.0 General Comments

The Property Council welcomes the opportunity to make a submission to this Inquiry into the Planning Bill 2022.

During 2022 the ACT Government undertook an extensive consultation process for the planning system review and reform. The Property Council and other industry stakeholders were provided with a briefing from the planners involved in the reform project and we appreciate the effort that has been invested by the project team. The consultation process for the Planning Bill 2022 was very extensive and provided our members with an opportunity for to better understand the changes.

The Property Council supports the need to move from the current rules-based planning system that functions under the *Planning and Development Act 2007* to a new planning framework that is focused on delivering better planning outcomes for the Territory. We understand the Bill supports the operation of a new Territory Plan that is currently being prepared. It is crucial that the provisions of the Planning Bill support a planning system that provides for greater certainty, opportunities for flexibility, reduced timeframes for planning applications and an elevated role for strategic planning.

The Property Council welcomed the introduction of the Planning Bill 2022 into the Legislative Assembly by the Minister for Planning and Land Management in September 2022 and we look forward to the Bill (with amendments) being enacted following the outcome of this Inquiry.

2.0 Summary of Property Council Submission

The Property Council made a detailed submission to the Environment, Planning and Sustainable Development Directorate (EPSDD) in June 2022 (a copy is attached). The submission made 16 key recommendations and we note that several of those were accepted by the ACT Government and have resulted in either a change to the Bill or will be implemented through a later stage of the reform program.

The following changes were made to the Planning Bill following the consultation process and we congratulate the ACT Government for making these important amendments to the draft legislation.

2.1 Territory Planning Authority and Chief Planner

The Property Council supports the establishment of the Territory Planning Authority and its ability to make decisions and provide certainty to all stakeholders. One of the important functions of the Territory Planning Authority stated in Section 18(1)(p) is to promote public education about, and understanding of, the planning system, including providing easily accessible public information and documentation on planning and land use.

The Property Council encourages the Authority to do more to implement this function, particularly to provide greater public awareness of planning controls and the role of the Territory Plan to manage developments. With the shift towards a new outcomes-focused planning system, the Chief Planner and the Authority will need to be more proactive in

informing the community on how certain planning decisions have been made and explaining the operation of the new planning system.

The Planning Bill provides the Chief Planner with a range of statutory powers under the new planning system. The Property Council supports the retention of existing powers and granting of new powers to the Chief Planner to make vital decisions regarding certain development applications, in particular Territory Priority Projects and other development.

We encourage the Committee to support the Chief Planner exercising discretion to achieve a good planning outcome and avoid being restricted by any advice that does not lead to a good planning outcome, including the ability to depart from the advice provided by other entities if it is in the best interests of the Territory and will adhere to an outcomes-focused system.

2.2 Territory Plan

The Property Council welcomes the preparation of a new Territory Plan and we will be making separate submissions to the EPSDD regarding the detailed content of the draft Territory Plan.

Section 46 of the Bill provides the objective of the Territory Plan which is to ensure that development in the ACT provides the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation. It is essential that the content of the Territory Plan contributes towards achieving this objective.

The Property Council supports the new Territory Plan giving effect to the strategic and spatial planning outcomes within the reformed planning system. Part 5.1 of the Planning Bill provides the mechanics of preparing and making a new Territory Plan under the new legislation.

Sections 48 and 49 of the Planning Bill sets out the format and content of the Territory Plan. The Property Council supports the identification of important matters of content and format of the plan. Given the move from a rules-based planning system to an outcomes-focused system, it is vital that the Territory Plan provide adequate guidance to stakeholders on the desired planning outcomes and how they will be achieved.

2.3 Entity Referral

The current requirement for referral of developments to entities is included in section 148 of the Planning and Development Act 2007 and clause 26 of the Planning and Development Regulation 2008. Clause 28 of the draft Planning (General) Regulation 2022 identifies specific entities that a development application requiring an EIS must be referred.

The Property Council supports the proposed drafting of section 187 of the Bill as it enables a development approval to be granted despite there being contrary entity advice. This is an important power that can be exercised by the Chief Planner and the Authority. This provision allows a decision-maker, having considered the merits of a proposal, to act contrary to the advice of an entity. We endorse the proposed requirement that the decision-maker must be satisfied that acting contrary to the advice will significantly improve the planning outcome.

2.4 Ministerial Call In

The Planning Bill proposes the removal of the current powers of the Minister to call in development under section 158 of the Planning and Development Act 2007. The Property Council does not oppose the abolition of this power that can be exercised by the Minister.

We acknowledge that there are wider benefits gained from the establishment of a more transparent and less politicised process using the Territory Priority Projects.

2.5 Territory Priority Projects

The Property Council supports the establishment of a new category of development in the Bill known as Territory Priority Projects.

We welcome the opportunity to provide comments on the mechanisms used to identify these project types. It is important that the types of projects eligible for consideration as Territory Priority Projects have a broad focus and include private sector developments such as development that has the potential to create new employment in the ACT and grow the Territory's economy and improve its social well-being.

The pathway should be open to major private proposals where they deliver significant public benefit. We would encourage the category being expanded to include warehouses, logistics centres, private educational facilities, affordable housing and student accommodation.

We welcome the amendment that was made to the Planning Bill which removed the requirement for projects to meet each of the criteria listed in section 215(1) of the Bill. The change now allows for worthy projects that only meet one or two of the criteria to be declared as a Territory Priority Project.

2.6 Third Party Review

Chapter 15 of the Bill provides the requirements for judicial review of planning decisions. It is understood that the Planning Bill has retained the current approach that provides for review and the circumstances where review can be sought. The Bill seeks to simplify the review framework. This approach is generally supported if it provides for less complexity and improved understanding of the legislative provisions regarding reviews.

Current exemptions from review are provided in Schedule 3 of the Planning and Development Regulation 2008. Schedule 7 of the Bill provides the list of matters that will be exempt from third party review in the ACT Civil and Administrative Tribunal (ACAT). This includes Territory Priority Projects, development located in the City Centre, a town centre, an industrial zone, the Kingston foreshore or the University of Canberra site and other specified development.

A move towards a simplified identification of matters that are exempt from review is supported. Any reduction or rationalisation of the existing exemptions from third-party review must be considered in the context of the introduction of Territory Priority Projects which are not open to third party appeal. We do not support any change to the existing exemptions until there is a holistic review of the ACAT.

3.0 Outstanding Issues

3.1 Objects of the Bill

The Property Council is generally supportive of the objects of the Planning Bill that are provided in section 7. We note the move towards an outcomes-focused planning system involves considerable change from the current assessment process and it is critical that the planning authority is adequately resourced to undertake the work required.

The expansion of the 'Object of the Act' to include principles of liveability and prosperity, resident well-being and community participation is welcomed. These principles will guide planning outcomes to ensure that the planning system caters for the needs of its residents and strengthen the social fabric that makes our city thrive.

The proposed objects are sensible and are supported by further detail in sections 7(2) and 7(3). There must be clear indication regarding how these outcomes will be achieved and implemented, particularly through the planning strategy, district strategies, the Territory Plan and other instruments.

3.2 Principles of Good Planning

The Planning Bill requires consideration of the principles in the development of planning strategies, plans and policies. The Property Council supports the introduction of the Principles of Good Planning that are set out in section 10.

The principles generally reflect the Government's desire for the planning system to focus on liveability, prosperity and the wellbeing of the community. It is recommended that the principles be reviewed regularly to ensure that they remain relevant and continue to align with the community's expectations.

The principles should also include a reference to housing supply and affordability that appear to have been overlooked in the drafting of the Planning Bill. We would also recommend a core focus of the planning system must be to enable appropriate development in the right locations. The Activation and Liveability principles should include a reference to housing diversity and housing suitable for ageing in the community.

Examples of how these principles could be achieved include the development of planning controls that promote housing to ensure diverse housing, infill housing in the right places and greater housing choice.

The Bill also identifies sustainability and resilience principles as another pillar of good planning. It is important to ensure that the planning system is aligned with the policy position of the ACT Government around sustainability and infill targets.

3.3 Principles of Good Consultation

Section 11 of the Bill states that the Minister may make guidelines about principles of good consultation. The Property Council supports the introduction of principles of good consultation where they will improve the operation of the planning system. The principles and the supporting guidelines should provide clear guidance on the matters for which consultation will be required and the procedures for undertaking any required consultation exercise.

It is important that the guidelines address the following matters:

- The purpose of the consultation with communities should be made clear and provide a description of the subject matter the consultation is about,
- Consultation activity should be targeted so that the right people are being informed about proposals,
- The timeframes for undertaking a consultation exercise should be made clear.

It is important that the consultation process on a development proposal should not become the mechanism for informing and educating the community on how the planning system and the Territory Plan operate. Proponents undertaking development should not be required to engage beyond the scope of their proposal.

3.4 Strategic Planning

The Property Council supports a planning system that places a greater emphasis on strategic planning to guide future land use decisions, locations for new housing and employment centres. The Planning Bill has the potential to do that.

We recommend to the Committee that there must be a process included in the preparation of strategic planning documents that gives community and industry stakeholders better understanding about how the ACT Government's strategic plans will be implemented and delivered through planning controls and decision making.

3.5 Planning Strategy

Section 41 of the Planning Bill provides for review of the Planning Strategy at least every 5 years. This approach is supported by the Property Council.

The Planning Strategy must provide long-term planning land use and policy direction for the Territory. Inputs into the preparation of the Planning Strategy must be evidence-based and developed using sound technical advice (population projections, housing data including supply factors and the community's housing needs). The Property Council recommends that the Planning Strategy be updated to reflect available housing supply evidence and population data.

3.6 District Strategies

The Property Council notes that section 38 of the Planning Bill provides for the content and making of District Strategies.

Nine (9) draft District Strategies have been released for public review and comment. The Property Council will be reviewing these strategies on behalf of our members and providing comments during the consultation period.

3.7 Territory Plan

The Property Council notes that Chapter 5 of the Planning Bill provides for the content and making of the Territory Plan.

A new Territory Plan has been released for public review and comment. The Property Council will be reviewing the new Territory Plan on behalf of our members and providing comments during the consultation period.

3.8 Amendments to Territory Plan

It is appropriate that the ACT Government allow community members to initiate amendments to the Territory Plan. This is consistent with what occurs in other jurisdictions where a

landowner or an individual can request a change to the planning controls applying to their land.

The proposed process for making amendments to the Territory Plan set out in Parts 5.2 and 5.3 of the Bill are generally supported.

Where a proponent initiates an amendment to the Plan, the Planning Bill (section 56(1)) provides the Authority with 3 months to make the initial decision whether to accept or reject an amendment to the Territory Plan. During the 3 month period the Authority is required to look at the planning strategy, any relevant district strategy, the content of the territory plan, the statement of planning principles and anything the Authority considers relevant to the amendment. We recommend that the Bill be amended to reduce this timeframe not more than 2 months. The reason for suggesting this change is 3 months is an excessive amount of time for the Authority to carry out an initial review of a proposed amendment.

3.9 Development Assessment Pathways

The Planning Bill proposes a transition from a rules-based planning system to an outcomes-based approach. The Property Council supports the establishment of new pathways for the assessment of development proposals.

The introduction of a single, efficient and transparent pathway to replace the current three assessment processes (Code, Merit and Impact tracks) is conditionally supported but it must allow the continued undertaking of relatively minor and low impact development to be considered in a short timeframe with minimal documentation requirements.

The change to a single assessment pathway must provide for improved assessment timeframes, less complex documentation requirements for proposals of a minor low impact nature.

It is crucial that adequate resources be allocated towards the reform project to ensure that the intended outcomes are achieved. There needs to be considerable upskilling of assessment planners in the Directorate (Territory Planning Authority) to undertake the assessment of developments against the new Territory Plan.

3.10 Significant Development

Section 92 of the Planning Bill identifies the types of development that all into the Significant Development category.

The Property Council does not support these three types of development being grouped into a single sub-category of development which would appear to be an oversimplification. Having regard to the characteristics of these development types, there are varying levels of complexity between development that requires an EIS and a development requiring design review.

We recommend a more appropriate categorisation of these sub-groups be developed that is better reflective of their complexity.

3.11 Environmental Impact Assessment

The Planning Bill proposes minimal changes to the existing EIA planning pathway.

The Bill will retain the existing Environmental Significance Opinion in section 138. We support the retention of this provision of the legislation where it contributes towards faster assessment timeframes and greater certainty within the assessment process.

No changes are proposed to the current Environmental Impact Assessment process.

The Planning Bill proposes to remove the current EIS exemption process that is provided for in section 211 of the Planning and Development Act 2007. The Property Council conditionally supports the changes proposed where they provide the ability to rely on recent studies and contribute towards faster assessment timeframes and greater certainty regarding the outcomes of the assessment process.

3.12 Design Review Process

The existing arrangements for the identification of development proposals for referral under the Regulations require that certain prescribed development must be considered through the design review process.

The Property Council supports the role of the design panel in the assessment process. There is a benefit to the development process that is gained from design review. It is critical that consideration be given to issues such as resourcing, timeframes and ensuring that design review panel can fit within the DA assessment timeframes.

3.13 Pre-DA community consultation

The Bill has removed the current pre-DA community consultation requirement. It is acknowledged that this requirement has not delivered the outcomes that it was intended to achieve. The Property Council supports the removal of this requirement.

3.14 Pre-Decision Advice

Section 179 of the Planning Bill allows the Territory Planning Authority to provide the applicant for a development (at anytime before determining a development application) advice that in the opinion of the Authority, the application does not meet the requirements of the Territory Plan.

The Property Council does not support the use of Pre-Decision Advice unless it can be demonstrated that it will improve the planning process. We acknowledge the value of communication between the applicant and the decision-maker regarding issues with a development, particularly where issues involve inconsistency with an aspect of the Territory Plan.

There are positive and negative issues associated with the introduction of Pre-Decision Advice. The concerns include the scope of the issues can be raised in the advice and what guidance will be provided regarding the use of the provision. The requirement that the advice is notifiable is also a significant concern as it is our view that this type of communication between the decision maker and the applicant should remain confidential in nature.

The Property Council recommends that the use of Pre-Decision Advice is reconsidered due to its potential negative impacts.

3.15 Assessment Considerations

Section 183 of the Planning Bill proposes that the following matters be considered in the assessment of an application:

(c) if the site of the proposed development adjoins another zone – whether the development proposal achieves an appropriate transition between the zones,

(d) the suitability of the proposed development in the context of the site and site surrounds, including the permissible uses for those areas,

(f) the interaction of the proposed development with any other adjoining or adjacent development proposals for which a development application has been submitted or development approval given.

These are not currently matters that must be considered in the assessment of a development application.

The Property Council does not support the inclusion of these matters as heads of consideration within the Act. These are highly subjective matters that are not appropriate to be considered in the assessment of individual developments.

It is our view that these types of matters are more appropriate to be considered in strategic plans or the Territory Plan. Planning controls should provide for the consideration of transition between different zones or different development types.

It is not clear how these matters will be interpreted by an assessment planner in areas undergoing change and transition such as greenfield areas or urban infill areas. In both circumstances, there can be significant differences between existing and proposed development. The requirement to consider the impact of a development on a form of development (such as detached housing where higher density is proposed) that is likely to be replaced in the short to medium term is not a good planning outcome.

3.16 Exempt Development

The Planning Bill provides for the continuation of Exempt Development within the planning system. The Property Council supports the continued operation of exempt development and encourage the ACT Government to undertake a review of other low-impact development types that could also be carried out as exempt development.

4.0 Conclusion

The Property Council has prepared this submission on behalf of its members having spent considerable time reviewing the Planning Bill 2022 and seeking input from the members of our Division Council and Planning Committee. We have also sought the views of our general membership engaged with the ACT planning system.

We generally support the intention of the Planning Bill and the other associated planning reforms that are progressing. We note amendments have been made to the Bill since the consultation period and view those changes as positive. The Bill will contribute towards achieving the outcomes-focused planning system.

This submission has outlined the key points from the Property Council's submission made to the Directorate in June. It is our view that there are more amendments necessary to improve the legislation. These are changes and our arguments in support of the amendments are provided within the submission.

We would welcome an opportunity to discuss our concerns regarding the Planning Bill with the Committee. It is important that the Committee have a full appreciation of the consequences of the proposals set out in the Bill before it prepares its report to the Legislative Assembly.