

The Committee Secretary
Standing Committee on Planning,
Environment and Territory and Municipal Services
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601.

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22 April 2014

Re: Submission on the *Planning and Development (Project Facilitation) Amendment Bill 2014*

Dear Committee Members

Thank you for the opportunity to comment on the *Planning and Development (Project Facilitation) Amendment Bill 2014*.

I do not support this Bill in its current form, and simply cannot understand how such an ill-thought out, draconian piece of legislation was allowed to be tabled in the ACT Legislative Assembly. I'm also concerned that the ACT Government initially tried to push this paradigm-shifting legislation through with very minimal public consultation.

The Project Facilitation Bill is designed to make things easier for politicians, planners and developers to get their way on key projects. The main purpose of the legislation appears to minimise consultation, silence opposing viewpoints and get rid of due process, such as the right of appeal, so that developments the Government thinks have a 'high public benefit' can be rammed through irrespective of community concern. In my view such legislation is undemocratic, unnecessary and irresponsible.

As with existing ministerial call-in powers, the Bill runs counter to responsible governance and represents top-down decision-making at its worst.

If anything, the new legislation is potentially even more dangerous than call-in powers because of its broader scope. The risk is that the government will see the new arrangements as less controversial than call-in powers, and will therefore be prepared to use them a lot more often. I wouldn't be surprised if in a few years every second project is deemed 'of high public benefit', and fast-tracked to override community opposition or environmental concerns. Without the community and courts keeping planners and developers in check, the result will be some truly woeful planning outcomes.

In addition, the Project Facilitation Bill goes further than call-in powers by removing the rights of review under the ADJR Act, and time limiting Supreme Court review under the common law. Even the Bill's own Explanatory Statement admits these provisions may contravene sections 17 and 21 of the Human Right Act. Call-in powers, as bad as they are, at least don't take these important rights away from the community.

I note that Planning Institute of Australia has voiced has raised concerns about the new legislation, criticising the way it shifts planning into the political arena and removes an important separation between politicians and developers. Corruption cases in NSW and elsewhere illustrate what can go wrong when ministers get too close to the planning approvals process. Who's to say what kind of government or Ministers we might have in the future, and how these laws might be abused? I'm not confident that the checks and balances in the legislation are sufficient. It will be open to abuse and influence.

One obvious loophole in the Bill is the lack of any constraints around what kind of projects can be fast tracked, other than a vote by the Legislative Assembly. The only criteria for a project to be fast tracked are that it be 'of substantial public benefit and of major significance to the Territory'. These criteria can't be quantified and are very subjective. Technically, even relatively small projects being built by developers for primarily private gain can fit the criteria. A future Legislative Assembly may be less than scrupulous and decide to 'fast track' any project, no matter how controversial, so long as the project proponents / developers lobby MLAs hard enough. It wouldn't be hard to prove a project is 'of substantial public benefit' or 'of major significance to the Territory' when these are not defined in the Bill, and there is no requirement for project proponents to quantify potential benefits.

Another aspect of the legislation I find objectionable is the utter lack of consultation. Working in policy development in the government sector, I understand how these processes should work. The Project Facilitation Bill to me looks like a case study in how **not** to do public policy. There was initially no public consultation on the Bill - the first the community heard of it was when a brief story appeared in the Canberra Times on 20 March. The next day, the draft Bill was tabled in Parliament, and it was to be voted on only two weeks later. To my horror, none of the community councils were even told the legislation was happening, let alone were asked for their views by Minister Corbell or his Directorate. Many found out only through the media, or through an email from Shane Rattenbury explaining his views (and he's not even the relevant Minister! It's a great credit to him that, unlike others, he actually took the time to write to stakeholders).

What is the hurry and why weren't stakeholders properly consulted to start with? Only once I and others started complaining to MLAs about the shortcomings of the Bill and the lack of consultation, and after this became an issue in the media and received some unfavourable coverage, was the vote on the legislation delayed and a formal (if still inadequately brief) consultation process began. This is not the way these things should happen.

In my view, the Project Facilitation Bill should not go ahead, at least as drafted. It has too many problems and not enough safeguards. It is not even necessary - the current system isn't broken, and no one has ever demonstrated that it is. At the very least there should be a substantial redraft and a proper consultation process around a revised version of the Bill should take place. The Government should also learn to actually take stakeholder views on board, not ignore them or pretend they don't exist - if it can't listen to the people when drafting legislation, what hope will it have when it comes to 'consulting' the community about fast tracking controversial projects?

I hope you carefully consider the issues I have raised, and look forward to your response. Please feel free to contact me if you need further information.

I'm happy to make myself available to give evidence to the Committee in person if required.

Yours sincerely

Dr Max Kwiatkowski