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The Secretary
Standing Committee on Planning and Environment
ACT Legislative Assembly
GPO Box 1020
CANBERRA CITY ACT 2601

Dear Ms Jaireth

Re: Draft Planning & Development Bill

Thank you for your invitation to make a submission to the Committee on its Inquiry into the draft *Planning and Development Bill*.

The HIA has prepared a written submission, which is attached, for your attention. I can also arrange for it to be provided in an electronic format if that is required.

HIA hopes that its comments and feedback ensure the passing of much awaited Bill, and which will lead to a vastly improved planning approval system. I would be pleased to discuss this submission and answer any questions that may arise, at your convenience.

Yours faithfully

Caroline Lemezina
Executive Director ACT/Southern NSW



HIA SUBMISSION

ACT DRAFT PLANNING and DEVELOPMENT BILL

Background

The Housing Industry Association in the ACT and Southern NSW represents 1,800 members who are vitally concerned with the future of their working and living community. The members of the housing industry are responsible for delivering over 2,000 housing units each year in the ACT. They play a very important role in the economy of ACT and the surrounding Region, and are keenly aware of its future development and growth.

Introduction

HIA has been concerned about the complicated and uncertain condition of ACT planning policies and controls for many years. It has been a worsening situation which HIA sees as adding to the overall costs of house building and a threat to possible future investments in the Territory.

Therefore, HIA welcomed the Planning System Reform Project initiated last year and is pleased with the progress of consultation which has followed over the past 12 months and resulted in the production of the *draft Planning and Development Bill*.

The recent Case Study Workshop was a particularly notable part of the consultation process which clarified many issues for HIA, but also allowed for free flowing discussion and open feedback to the ACT Planning and Land Authority (ACTPLA). HIA has found ACTPLA's processes to be transparent throughout the consultation process and the authority's staff was very receptive to frank discussion and suggestions. This process has produced a draft Bill which offers a framework to re establish the ACT's reputation as a uniquely and well planned City.

Canberra needs to face up to its future development opportunities and the challenges of change. Canberra can develop and grow as a larger and dynamic regional centre, but needs incentives not restrictions to do so.

Many of the suggestions made by HIA at the beginning of the consultation process for planning reform, which began last year, have been incorporated into the draft Bill. Of particular importance to HIA members is the proposed reduction in the level of consultation and appeal rights. The ACT carries the reputation for having the most excessive level of planning approval controls in Australia, and is regarded as the 'nimby' capital of Australia. Many residents have an extreme level of expectation to be involved in the happenings in their neighbour's backyard, but fiercely object when the situation is reversed. Excessive consultation only leads to greater community conflict and frustration.

Whilst there may be some initial community concern, HIA believes that the draft Bill has established a reasonable balance on this matter, as neighbourhood comments will still be invited on impacting type residential projects, while more expansive public consultation and appeal rights will be available on more sensitive projects.

The next stage of the planning reform project to review and rewrite planning codes is the most critical part of the project. It is critical that these new codes are accepted and gain the confidence of property owners and their builders, their neighbours and the whole Canberra community.

Response to Draft Bill

HIA has reviewed the draft Bill and finds it to be a much clearer document with its use of plainer language, clearer definitions and terminology which are more commonly used in planning and development jurisdictions throughout Australia.

HIA's comments to the chapters of the document, as they affect its members, are as follows:

The Planning and Land Authority

The current arrangements of the Authority have developed well since its establishment, and the continued separation of the Planning Minister from daily planning approval processes is supported.

The closure of the Planning Council whilst retaining Ministerial call-in right are also welcome.

An important issue which may not be able to be fully addressed in the new legislation is the cultural change for required for ACTPLA assessment staff. ACTPLA staff has been regarded to be mostly risk averse due to the extreme level of public consultation and scrutiny of their decisions by the amount of third party appeal rights. These staff should now be encouraged to recognise the opportunities for more innovative and challenging decisions, which will be able to be made when the new legislation is in place.

The Land Development Agency

The new legislation must allow the Land Development Agency (LDA) to continue to ensure that the Territory has an adequate, appropriate and affordable land supply. Land supply needs to be flexible to meet unpredictable market fluctuations, such as increased Commonwealth public service numbers. But it must also recognise the demographic changes occurring in the ACT, as the different requirements of a rapidly aging population increase.

Due to the LDA's knowledge of the residential market, it is also important for the LDA to be able to provide a substantial input into the master planning of both new green-field and brown-field estates.

Territory Plan

The proposed changes to the Territory Plan are supported by HIA.

HIA supports the reduction in projects open to third party appeal rights, the review of the plan every five years and the allowance of minor variations to be processed much quicker than has been the past practice.

Also, most importantly is that part of this will change will see the preparation of new planning codes during the next six months. These new codes which will be less in number, simplified, and more clearly understood will avoid confusing and contradictory interpretations and place the ACT's future development on a more assured course. They should also readily allow for innovation of design and flexibility to meet changing market needs and opportunities.

Planning Strategy

HIA was an active supporter and participant in the preparation of the Canberra Spatial Plan, and as a long term strategic plan for the ACT's future growth, welcomes its incorporation within the proposed Bill. This will give given more certainty to the development of Canberra in achieving its potential 500,000 population.

Development Approvals

The use of the Development Assessment Forum's (DAF) model for a National planning code is a very welcome inclusion in the planning process reform. The well considered approval tracks are gaining national acceptance and adoption and should lead to more streamlined approval processes. HIA supports ACTPLA's adaptation of these tracks to the ACT's particular requirements.

The use of a prohibited application removes all uncertainty.

Exempt projects for many class 10 structures and new green-field houses will apply to many HIA members' projects. The alignment of exempt minor types with Building Code of Australia definitions will also simplify the process for many affordable type works carried out by leaseholders or small scale builders.

The new role of private Building Certifiers in the exempt approval track is also supported by HIA. HIA understands that development approval will not be issued, and therefore no fee will be charged. This cost saving can be expected to be partially offset by the Building Certifier's fee, but with the quicker processing of the combined exempt development approvals and building approvals, the level of approval costs should be eased for the builder and designer, thus benefiting the consumer.

Some states have similar procedures and HIA offers to work further with ACTPLA and Building Certifiers to ensure that the procedures for this exempt track are developed as best practice based on our practical knowledge of these other systems .

Project type allocations to either Code or Merit approval tracks will have to be clearly defined during the development of the new planning codes. For reasons of encouraging design innovation and delivery efficiency, HIA encourages a reduction in the current levels of consultation. HIA believes that only immediately affected neighbours should be notified for comments relating to privacy and overshadowing, and suggests that if only a front yard addition is proposed then rear neighbours need not be approached.

HIA also encourages ACTPLA to ensure that adequate and appropriate resources are available to support pre-application processes and the development of innovative approaches through the merit based assessment track.

The success of these new codes is very dependent upon the role and support of the various referral Agencies in other parts of Government. The resourcing of these respective areas to prepare and administer their new codes is critical. HIA suggests that the use of certified private professionals, in addition to Building Certifiers, be considered for reviewing documents and inspecting works to ensure the processing timeframes set-out in the draft Bill are always met.

Lease and Development conditions will also require simplification so that the confusion with the Territory Plan, which sometimes arises, is removed.

Environmental Impact Statements

The requirement for an Environmental Impact Statement (EIS), and the new processes proposed in the draft Bill, will make the ACT's practices for EIS's more consistent with best National practices. The proposal will thus provide a noticeable improvement to the timeline for processing and endorsing more complicated and sensitive proposals, which should make the ACT a more attractive location for investment.

Leases and Licences

HIA supports the principle that the Territory Plan is to be the prime planning control document. The draft Bill allows for the preparation simpler new lease conditions and will allow for more flexibly worded purpose of use sections in new leases.

The removal of contradictions between the Territory Plan and leases will provide more certainty for those preparing future development proposals.

HIA understands that a separate proposal for improvements to the Change of Use Charges will be issued later for comment.

Compliance

HIA accepts that the new streamlined processing system, which will benefit all applicants, will have to be more closely monitored for compliance. The increased penalties will hopefully work as a disincentive, and therefore few applicants will have to be publicly identified. Audited experience in states with significant levels of private assessment of 'complying' or 'as-of right' development indicates high levels of compliance.

Review of Decisions

The lessening of Administrative Appeals Tribunal (AAT) appeal rights, especially for many residential type projects is welcomed. The new planning codes will be the final stage for establishing a more streamlined and assured approval process for many types of projects, which can be caught up in very lengthy and uncertain appeal mechanisms. The engagement of community members who are concerned about change and redevelopment should be encouraged to be fully involved in the preparation of the new codes, so that future development proposals can be prepared with more certainty.

The definition of a materially detrimental citizen is yet to be tested, but HIA hopes that this restriction on collective third party applicants will remove one of the major disincentives for innovative redevelopment projects. Many proposals in brown-field areas have been regularly subjected to collective actions which have been very costly to defend. These actions have often restricted development opportunities and have even seen some projects cancelled.

Response to anticipated planning code reforms

The preparation of the new planning codes remains the critical part of the planning reform process. Clear, concise, and easily understood codes will need to be prepared collaboratively with industry and community representatives, so that the streamlined planning approval processes are assured.

Whilst HIA expects to have substantial input throughout the consultation process, the following proposal relating to the various mechanisms, which control the size of a house is offered to commence the review process.

HIA regards that the collection of the disparate rules should be reduced. A plot ratio, maximum building heights, boundary setbacks, building envelopes, a strict definitions on basements and attics, minimum private open space dimensions and proportions on a block, and car-parking requirements restricts innovative design and reduces the capacity to affordably and flexibly meet changing market demands.

The priority of a residential planning code in its affect upon neighbours should be to ensure privacy and restrict overshadowing, and then to consider scale of dwelling in streetscape.

Therefore HIA proposes that the rules for plot ratio, basement and attic definitions, private open space proportions be abolished and that a site coverage requirement be introduced. The maximum roof slope could also be increased to 45 degrees in lieu of the currently impractical 36 degrees.

With the preparation of more appropriate codes, future Lease and Development conditions should contain less detail and be less repetitive of the related planning code. The new codes, as part of the new Territory Plan, should be the ultimate planning and development control.

Customer Service

As these legislative reforms are introduced it is important that the understanding and attitude of ACTPLA staff is brought along. The new policies and codes should be taken up promptly and enthusiastically by staff, not be used as an excuse to delay decisions.

Customer service should primarily be addressed to the leaseholder or proponent. They have paid the application fees, not the objectors. Proponents regularly observe that the arrival of an objection or ministerial letter results in a shift in the customer focus by assessing staff. Excessive time delays are the immediate effect, and the merits and possible beneficial outcomes of a proposal are usually ignored. Very strict and limited application of qualitative criteria then results.

The housing industry plays an important role in the ACT economy, and its success is important for attracting investment and growth to the Territory. However, this understanding often seems to be lacking in ACTPLA and other agencies involved in the planning approval process.

The further development of electronic lodgement of applications is supported by HIA as it will certainly assist in speeding up application and processing times.

Summary

The processing of Development Applications has a dual purpose. It has to meet the expectations of the individual leaseholders and their builders and designers, but also the needs of the City for great, high quality and continuing development opportunities. The Draft Planning and Development Bill meets this objective so that the ACT can progress from having the reputation for possessing the worst planning regime in Australia, to setting a new and improved standard. The ACT was where the standard National Building Code of Australia was developed and trialed in the 1980's, and this new planning approval legislation may see the ACT again initiating a National Code for Planning and Development.

The next phase of producing codes has to ensure that flexibility and timely certainty is provided so that the ACT can grow and develop, as well redevelopment, to meet the City's changing demographic and housing market needs.