



The Royal Australian Institute of Architects

Response to the
exposure draft Planning
and Development Bill
2006

SUBMISSION BY

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PURPOSE

- This submission is made by the Royal Australian Institute of Architects ACT chapter (RAIA) to the ACT Planning and Land Authority (ACTPLA) in response to the release of the Exposure Draft Planning and Development Bill 2006.
- This submission has been prepared with the assistance of the ACT Planning Committee of the RAIA.
- The ACT Chapter Manager is Colin Dwyer AM

INFORMATION

Who is making this submission?

- The ACT Chapter of RAIA has authorised this submission on behalf of its members.
- The Royal Australian Institute of Architects (RAIA) is an independent voluntary subscription-based member organization with approximately 8,800 members, of which 6,070 are architect members. Members are bound by a Code of Conduct and Disciplinary Procedures.
- The RAIA, incorporated in 1929, is one of the 96 member associations of the International Union of Architects (UIA) and is represented on the International Practice Commission.

Where does the RAIA rank as a professional association?

- At approximately 8,800 members, the RAIA represents the largest group of non-engineer design professionals in Australia.



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Contents

1.0 INTRODUCTION

1.1 Better planning and design for the ACT.

1.2 Expertise of the RAIA

1.3 Role of architects in a sustainable future

2.0 THE CO ORDINATION OF THE SUBMISSION AND TIMING OF THE RELEASE OF THE DRAFT PLANNING AND DEVELOPMENT BILL 2006

2.1 Nature of the Consultation Process

3.0 SUBMISSION OVERVIEW

3.1 ACTPLA organisational structure/certification:

- 3.1.1 That the ACTPLA staff assessing development applications (particularly merit track) need to be appropriately skilled and experienced.
- 3.1.2 That ACTPLA staff designing and writing codes need to be appropriately skilled and experienced
- 3.1.3 That ACTPLA has the requisite authority to decide on competing claims from referring authorities in a timely manner.
- 3.1.4 That private entity certification is monitored by appropriate licensing and regulation by ACTPLA.
- 3.1.5 That requests for additional information does not unduly delay development applications.

3.2 Design Quality

- 3.2.1 Performance based assessment/compliance should play more important role in assessing applications.
- 3.2.2 That a complying merit track assessment should not take longer to approve than a code track assessment.
- 3.2.3 That precinct development plans and community consultation statements can't adequately replace master plans.

3.3 Consultation

- 3.3.1 That RAIA supports the new public consultation model that restricts vexatious complainants.
- 3.3.2 That the merit requirement for mandatory consultation is inconsistent with the DAF model that notes a merit track MAY require third party consultation.
- 3.3.3 That ACTPLA should mediate conflicting submissions from referring agencies.

3.4 Environmental Impact

- 3.4.1 RAIA supports the move to a one step process for environmental impact.
- 3.4.2 That there be clarity over which development applications trigger EIS and case by case assessment of the need for notification requirements of the scoping component of an EIS for a development application outside the impact stream.

1.0 INTRODUCTION

1.1 Better Planning and Design for the ACT

- 1.1.1 The RAIA ACT Chapter is pleased to provide comment on the Exposure Draft of the Planning and Land Bill 2006

1.2 Expertise of the RAIA

- 1.2.1 The RAIA seeks to advance the professional development of the architectural profession and highlight the positive benefits of good design in addressing the concerns of the community in relation to sustainability, quality of life and protection of the environment.
- 1.2.2 The RAIA promotes responsible and environmentally sustainable design, and vigorously lobbies to maintain and improve the quality of design standards in cities, urban areas, commercial and residential buildings.
- 1.2.3 The RAIA has established professional standards. Members must undertake ongoing professional development, and are obliged to operate according to the RAIA's Code of Professional Conduct. The Professional Development Unit offers an extensive program at national and state level, continuing to keep members informed of the latest ideas, technology and trends in architecture and the construction industry.
- 1.2.4 The RAIA represents the profession on numerous national and state industry and government bodies, advising on issues of interest to the architectural profession, other building professionals and the construction industry.

2.0 THE CO ORDINATION OF THE SUBMISSION AND TIMING OF THE RELEASE OF THE DRAFT PLANNING AND DEVELOPMENT BILL 2006

2.1 The nature of the consultation process

The RAIA ACT Chapter will qualify that this submission is being drafted in the absence of revisions to the Territory Plan, which include the design codes, zones and development tables. It also notes that corresponding legislative amendments that set out the requirements for action by other agencies to meet timeframes and approval processes as set out in this bill are also not available.

2.2 The RAIA can not support the draft planning reform bill without the essential supporting documents.

The absence of the relevant supporting material does not allow any assessment of the actual implications of the application of the proposed legislative changes. One sample only of zone policy, development table and design code has been provided. There are serious concerns that the proposed Planning Reform will fail to deliver the significant improvements in processing of development applications sought, based on the sample material provided.

While the RAIA supports in principle the move to a Development Application system based on the DAF model, and applauds the ACT Government's initiative to do so, the material presented to date does not enable the regime proposed by the Bill to be adequately tested through case studies

RAIA would like to make further comment once the revised Territory Plan and its associated codes are released. RAIA believes it is essential that this opportunity

exists prior to the bill proceeding to the legislature for debate. Until this opportunity to further contribute to the process is made available, RAIA will not be able to support this legislation.

The RAIA believes that it is essential that ACTPLA is provided with supplementary funding to provide professional resourcing to enable the preparation of this material in an expeditious manner to avoid delays to the implementation of Planning Reform, consistent with the DAF model which we strongly support.

If the Bill cannot be progressed there needs to be additional interim measures that must be put in place to deliver the improved response times expected of other agencies. The agencies are required under the bill to respond within 15 days and this should be implemented through interim measures.

3.0 SUBMISSION OVERVIEW

The exemption for assessment of new developments on undeveloped (green field) sites will significantly reduce the administrative burden on ACTPLA. This also potentially makes the development of the majority of new housing in the ACT a lesser strain on the development industry. Therefore ACTPLA has the opportunity to focus on using these resources to improve both the efficiency and effectiveness of regulating new development in the existing urban fabric. RAIA sees that ACTPLA has an opportunity to use freed-up resources to better align the administrative task of assessment with the level of complexity required for each assessment track. So, an opportunity exists for ACTPLA to work with the building and development profession to ensure that both applicants and assessors have the capacity to improve the efficiency of the approval process without inhibiting innovative design in the process.

This can be achieved through the following legislative amendments;

3.1 ACTPLA organisational structure/certification:

The RAIA would expect the reform of the planning system should expedite development approval in much reduced timeframes. This should be achieved under the following conditions

- 3.1.1 That the ACTPLA staff assessing development applications need to have the requisite professional qualifications and in-house training to be appropriately skilled and experienced for the stream being assessed .

RAIA supports any strategy that ensures the assessment of development applications is undertaken by individuals with an appropriate level of skill and experience. This may include licensing or registering requirements for different levels. For example, a merit track assessor would require a higher level of training and experience than a code track assessor. It would also support a model that allows the contracting of that task to the private sector as long as the assessor meets the requisite licensing requirements.

- 3.1.2 That ACTPLA staff designing and writing revisions to the Territory Plan, zone policies, development tables and codes need have the requisite professional qualifications and in-house training as required to be appropriately skilled and experienced.

RAIA believes that the designing and writing of codes should be undertaken in a way that maximises public benefit as well as promoting the objectives of the Act. *The RAIA seeks involvement through industry consultation on the development of the codes in the form of review of draft codes, zone policies and development tables.* ACTPLA needs to be specifically resourced to engage professionals with appropriate training and expertise to prepare these documents in support of the proposed legislation. This task is critical to the success of the proposed reforms and their timely implementation. The reduction in resources to ACTPLA at this critical time is a matter of extreme concern to the Institute, and it is strongly recommended that project specific funding to enable appropriate resourcing of this task be provided immediately.

3.1.3 That ACTPLA has the requisite authority to decide on competing claims from referring authorities in a timely manner.

RAIA supports interagency consultation as it can be a catalyst for generating better, more relevant design outcomes. However, it proposes that this process can be more effective and efficient in delivering genuine outcomes if ACTPLA has the capacity to reconcile competing referral advice from entities prior to requesting amendments to the application. RAIA supports the planning reform project to shift the onus of responsibility to the agencies to present clear and unambiguous referral advice to the proponent in a timely and consistent manner. In addition, we recommend that there be clear authority for ACTPLA to reconcile competing advice from intergovernmental agencies and that ACTPLA should be identified as the single point of assessment responsible for planning related matters consistent with the principles of the DAF model.

3.1.4 That private entity certification is monitored by appropriate licensing and regulation by ACTPLA.

RAIA supports the use of private certifiers as long as the agency has the capacity and authority to regulate and monitor licensing and performance of certifiers.

The RAIA recommends that a the process proposed for approving and listing acceptable EIS assessors (S197) be replicated for the Building Surveyors or Planning Certifiers require to implement the Exempt Stream of development assessment. We note that the Exempt Stream is effectively an outsourcing of the simplest level development assessment to the private sector for specific building types and locations. It should, therefore, be regulated to some degree by ACTPLA to give the community confidence in the system, to make it auditable and to ensure only those with the training and experience to make the assessment are used.

3.1.5 That requests for additional information do not unduly delay development applications.

RAIA supports the agency's responsibility to satisfy itself that all information is made available in order to be able to make a decision to approve or refuse an application. However, it is critical that any requirement for additional or missing information be requested in the early stage of the assessment. The ten day period provided for in the draft bill is supported as a maximum timeframe. A request for additional information should be first, final and sufficiently detailed to ensure information provided in response will be adequate. This will assist to avoid delays due to debate about adequacy. Such a request for information to support the application should include any information required by all other government agencies.

The provision for late requests in the Bill, (even though they do not effectively stop the clock on a DA), is not supported. There should be an onus on the approving agency, and any referral agencies, to make an initial assessment in sufficient detail to identify required information within ten days.

3.2 Design Quality

The RAIA would expect the reform of the planning system to facilitate quality design. This should be achieved under the following conditions.

- 3.2.1 Performance based assessment/compliance should play more important role in assessing applications.

RAIA believes that the development industry should play a more active role in facilitating good design outcomes by becoming actively involved in the design of development codes. The planning reform project provides the opportunity for government and industry to work together to make good design a more attractive and financially viable preference.

- 3.2.2 That a complying merit track assessment should not take longer to approve than a code track assessment.

The RAIA supports the governments desire to make development application and certification more efficient without relinquishing its public interest responsibility. The RAIA believes this can be achieved through a better allocation of resources to match the complexity of assessments submitted. Various strategies mentioned previously include the matching of assessment complexity with the skill and training of the assessor, as well as creating a closer relationship with government and industry through better code design. The RAIA believes that consideration should be given to support good design. So merit track applications and code track applications should require the same timeframes for decision deadlines.

According to the sample code, most of the Merit criteria would not even require referral to a relevant agency. However, should it be required, the referral process should also be achievable in the same time-line as a code assessment as the referral would relate only to those matters under merit criteria.

The automatic public notification of merit assessment track based on the sample code provided is not supported. Public Notification should be subject to case by case assessment and the basis of the need for notification identified during pre application meetings with the Authority.

Based on the sample code provided and the trigger for merit assessment in the Bill development proposals not fully covered by ALL prescriptive code requirements become Merit Stream assessments requiring Public Notification.. Many of the Merit Criteria in the sample code are still effectively quantifiable or technical matters of judgement that can be professionally assessed and do not require consultation. As noted in the DAF model referral to notification should relate to conflict with policy.

- 3.2.3 That precinct development plans and community consultation statements can't adequately replace master plans.

RAIA respects ACTPLA's responsibility to maintain the quality of urban design and social outcomes through the planning process. The proposal to remove masterplans as a basis for review of development applications puts an increased requirement on precinct plans to define the development controls related to defined precincts. Consideration needs to be given to the mechanisms to be used to allow localised negotiation for innovative site-

specific outcomes which have non compliant performance based measures (such as reduced setbacks) and are balanced by improved outcomes. RAIA believes the master planning process allows proponents to present “compelling arguments” to support innovative design where non-compliance is essential to the desired outcome. Consistent with the DAF Model this should be subject to public notification.

The RAIA recommends that requirements related to heritage and environment should be referenced in precinct codes. This could be by reference documents such as heritage registers. This would bring other agency requirements into the main body of planning codes and enhance the clarity of the system.

3.3 Consultation

The RAIA would expect the reform of the planning system to facilitate a reasonable consultation process. This should be achieved under the following conditions.

- 3.3.1 That RAIA supports the new public consultation model that restricts vexatious complainants.

The RAIA believes that well managed, appropriately targeted public consultation is essential to mediating public interest with private interests, and can contribute to good design. The RAIA supports the restrictions on consultation as a means of ensuring that the public consultation process reflects the desire of the agency to seek the views of the community while minimising the risk of development being stifled by vexatious or minority interest complainants.

- 3.3.2 That the merit requirement for mandatory consultation is inconsistent with the DAF model that notes a merit track *may* require third party consultation.

RAIA believes the trigger for public consultation should be more considered. The mandatory requirements for public consultation can be interpreted as a disincentive for proponents to support designs that are likely to fall into the merit track.

- 3.3.3 That ACTPLA should mediate conflicting submissions from referring agencies.

RAIA submits that ACTPLA is in the best position to mediate discrepancies from referring agencies, but also has the capacity to liaise with referring agencies regarding issues relating to development. RAIA submits that the Planning and Development Bill should include a section that requires referring entities to consult with ACTPLA and professional institutes on ongoing issues of development. They should also need to support their advice with evidence of this consultation. ACTPLA should be the single agency responsible for planning approval as set out in the principles of the DAF model.

3.4 Environmental Impact

The RAIA would expect the reform of the planning system to consider environmental impact in an accountable and efficient manner. This should be achieved under the following conditions.

- 3.4.1 The RAIA supports the move to a one-step process for environmental impact.

RAIA believes the agency's public duty to trigger the need for environmental impact is essential, and applauds the effort to retain its authority without adding undue delays to the assessment process.

- 3.4.2 That clarity over which developments trigger EIS and notification requirements of the scoping component of an EIS.

In addition to this, it is understood that some development applications may be referred for an EIS where the authority identifies a possible environmental impact. The potential impact needs to be identified as early in the process as possible as this is essential when considering design strategies in consultation with their clients prior to submission of development applications.

The RAIA contends that where an EIS is triggered, the need for public notification on the draft scope should be assessed on a case by case basis with regard to an identifiable specific impact of a specific part of development application. In these cases it is expected that the Authority should have sufficient expertise to set the scope in most situations and that the unspecified delay that can arise from the public notification process set out under the draft Bill would be unnecessarily onerous.

The nominated 20 day public notification contains no specified timeline for initial draft preparation or final agreement on scope before and after public notification. This should be replaced by a 10 day period for the Authority to draft the scope of the EIS.

The bill also needs to clarify the process by which the EIS is accepted as a basis for making the DA assessment. Currently there is no indication of who makes this decision or how it is formalised.

The RAIA supports the removal of environmental impact statement requirements where a development proposal is consistent with the Territory Plan and zoning or precinct requirements, unless there is an identified risk of significant environmental impact due to the type of development as scheduled.

Appendix:

Notwithstanding our position that the planning instruments should be assessed concurrently, the RAIA proposes the following amendments to the Planning and Development Bill

In relation to deciding which track a development will be assessed under to offer more certainty to proponents at an early stage.

7.2.1 s106 (1) The development table sets out the criteria to allow the assessment track for a development application for a development proposal to be worked-out. Add agreed between the agency and the applicant prior to ACTPLA proceeding with the application.

In relation to the design of development codes in the territory plan, to offer more scope for innovative design solutions, the need for public notification in the Merit Stream assessment needs to be assessed based on likelihood of material effect and the timelines modified

7.2.3 s113 Merit track – public notification right of review for merit track If a development proposal is in the merit track Add and there is the likelihood of material effect on a third party,

7.2.3 s114 Merit track—time for decision on application
A development application for a development proposal in the merit track must be decided under section 148 (Deciding development applications) not later than—

Remove existing (a) & (b) and Add

- (a) if there is no requirement for public notification – 20 working days after the application is made to the planning and land authority;or
- (b) if public notification is required and no representation is made in relation to the proposal- 30 working days after the day the application is made to the planning and land authority;or
- (c) in any other case – 45 working days....

In relation to employing or contracting adequately trained staff, to give confidence to the design profession that innovative design is both seen as desirable and financially sound to the authority and the development industry.

6 Main object of Act

The main object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—
(b) in accordance with sound financial principles.

The RAIA contends that the 'cost' to the community of inefficient development applications procedures caused by inappropriate staffing contravenes the object s6 (b) of the Act.

Adopt a similar model, as 8.2 s197 Authority to prepare list of EIS consultants, to prepare a list of appropriately qualified personnel to undertake code, merit or impact stream assessment.

(1) The planning and land authority must prepare a list of people the

Authority considers appropriate.

(2) However, the planning and land authority must not include a person on the list unless satisfied that the person has the experience or expertise to assess and decide a development application.

(3) The list is a notifiable instrument.

In relation to the clarification of additional powers to offer certainty.

The wording suggests the list of conditions s150 (3) (a-p) is not conclusive i.e. There could be other reasons for conditional approval. *Suggestion: make the list conclusive)*

(3) Following are examples of the conditions subject to which a development approval in relation to land may be approved, other than an approval for a code track proposal

In relation to time limits on Development Applications to allow scope for more speculative options related to development proposals during the DA period.

7.3.9 s168 (2) A development approval to which this section applies ends if—
(a) the development or any stage of the development has not started by the end of the period stated in the approval; or add within three years of approval. Amend to make a default three year period with the option to state a defined period other than three years.

In relation to pre-application advice, to give certainty to the proponent between the pre-application and application stage.

7.3.1 s127(4) However, the planning and land authority may act inconsistently with advice under this section in relation to a development proposal if, ~~in all the circumstances, the authority considers that it is appropriate to do so.~~

- (i) development application differs from the pre application
- (ii) new if new information that changes the probable impact or effect of the proposal is brought to the attention of the planning and land authority

In relation to notification of development types and sites that might trigger an EIS, to give certainty to the proponent of the stream a proposal will fall under.

8.2 Scoping of an EIS s187

(2) (c) (i) publicly notify the draft scoping document under section 188 where the development is listed in the relevant development table or schedule 4; or (ii) publicly notify the draft scoping document where a declaration has been made under s 116 or s 117 and there is a likelihood of material effect on a third party or;

(iii) issue of finalized scoping document within 15 working days.

Add (5) The planning and land authority must complete the draft scoping document within 15 working days.

8.2 Finalising scoping document s191

Add (3) The planning and land authority must finalise the draft scoping document within 10 working days.

Further, the Bill needs to clarify if, under s193 Authority consideration of EIS, an accepted EIS will be the basis for the assessment of a development application.

Is acceptance by the planning and land authority of an EIS necessary for it to be regarded as complete under 7.2.4.s 122?

References

Exposure Draft Planning and Development Bill 2006 Prepared by the Parliamentary Councils Office ACT Government 2006

Pennington, M. (1999). Free market environmentalism and the limits of land use planning. *Journal of Environmental Policy and Planning*, 1, 1, pp. 43-59.

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