

2006

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT RESPONSE TO THE PLANNING AND ENVIRONMENT
COMMITTEE REPORT NO. 22 OF 2006
'EXPOSURE DRAFT PLANNING AND DEVELOPMENT BILL'

TABLING STATEMENT

Presented by
Mr Simon Corbell MLA
Minister for Planning

Government Response to the Planning and Environment Committee
Report No. 22 of 2006 'Exposure Draft Planning and Development Bill'

In association with my presentation of the Bill, I am also tabling the Government's response to the Planning and Environment Committee Report No. 22 of 2006 'Exposure Draft Planning and Development Bill'.

The Committee, in its report released in October, made 48 recommendations in relation to the exposure draft of the Bill, which largely focus on the refinement or clarification of particular provisions, and respond to key matters raised by stakeholders during its inquiry. In addition, the Committee suggested minor or technical amendments to the Bill, as detailed in Table 1 of its report.

The Government in its response has agreed, agreed in part or agreed in principle to 22 of the Committee's recommendations, which has resulted in significant refinement of the Bill. A further 14 of the Committee's recommendations have been noted and addressed accordingly in the response, with 12 of its recommendations not being agreed.

Mr Seselja, as member of the Committee, provided additional and dissenting comments in relation to the provisions for third party appeals. He recommended that clauses in the Bill, which grant standing for third party appeals, "should be amended to ensure that organisations cannot be established specifically to gain standing".

The Government does not agree with Mr Seselja's recommendation, as this would appear to be an unreasonable restriction on the ability of people to form associations for a variety of purposes. This provision in the Bill, and related ones, will be monitored after implementation.

The Committee has commended many of the aspects of the draft legislation, including the substantial simplification of existing legislative

provisions, introduction of the track based assessment system and a much improved impact assessment process. The Committee has also commended the Planning and Land Authority's commitment to engaging with the community during consultation on the Bill.

In relation to the Committee's comments on the Territory Plan, and reflected in the Government response, the consultative process on the replacement of the Territory Plan has commenced. This will culminate in the release of a complete restructured Territory Plan for public comment in the first part of 2007.

Mr Speaker, I am pleased to table the Government response to the Planning and Environment Committee report No. 22 of 2006 on the exposure draft Planning and Development Bill. I would like to take the opportunity to thank the Committee for its timely and effective examination of the key issues and for its report.

2006

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT RESPONSE TO THE STANDING COMMITTEE
ON PLANNING AND ENVIRONMENT
REPORT NO. 22 OF 2006
EXPOSURE DRAFT PLANNING AND DEVELOPMENT BILL

Presented by
Simon Corbell MLA
Minister for Planning

**Government response to Planning and Environment Committee Report No. 22 of 2006
'Exposure Draft Planning and Development Bill'**

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 1 1.34 The Committee recommends that the draft Bill be amended to require the Minister to report to the Assembly on the issues raised during the revision of the Territory Plan and its component parts.	Agreed in principle. The Minister will report to the Assembly on consultation for the Territory Plan as a matter of administration. However, the Bill will not be amended to make this a legislative requirement. Additionally, the Minister will formally respond to any issues raised by the Planning and Environment Committee following its consideration of the revised Territory Plan and its component parts.
RECOMMENDATION 2 1.53 The Committee recommends that the Minister ensure that all codes and guidelines under the Act explicitly address the social aspects of sustainable development.	Agreed in principle. The Committee's recommendation can be achieved by other means. Sustainability, including social sustainability, is an integral part of the Territory Plan, reflected through the proposed statement of strategic directions and at the more detailed level, through appropriate controls in codes. Stakeholders and the broader community are being given opportunities to contribute to the refinement of the development codes.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 3 1.54 The Committee recommends that the proposed legislation refer to ‘ecologically sustainable development’ rather than ‘sustainable development’, in each instance, for consistency across ACT legislation.	Not agreed. The focus of current Government policy is on the broader concept of sustainability. This is reinforced through the Government’s current policy for sustainability in the ACT People Place Prosperity, as launched by the Chief Minister on 27 March 2003. This document is the ACT Government’s policy commitment to sustainability. The policy describes the sustainability principles that the ACT Government will incorporate into its systems and operations. It commits the ACT Government to: • embedding sustainability within its decision-making processes; • promoting sustainability to the wider community; • developing partnerships for sustainability with the ACT community; and • developing indicators and reporting regularly on progress. People Place Prosperity also provides the philosophical underpinning for the development of The Canberra Plan, the ACT Government’s broad ranging and comprehensive framework for a sustainable future. In the circumstances it is not appropriate to specifically refer to “ecologically sustainable development”, as it is only one aspect of sustainable development.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 4 1.55 The Committee recommends that clauses 6 and 97 be amended to omit reference to the ‘social, environmental and economic aspirations of the people of the ACT’.	Not agreed. The current wording of this section is necessary to ensure the Planning and Development Bill is appropriately aligned to the <i>Australian Capital Territory (Planning and Land Management) Act 1988 (C’wlth)</i>. Section 97 builds on these principles.
RECOMMENDATION 5 1.56 The Committee recommends that paragraph 11(3)(a) be amended to require the Planning and Land Authority to exercise its functions in a way that ‘gives effect to sustainable development’, rather than ‘has regard to sustainable development’ as currently proposed.	Agreed. The Bill has been amended to give effect to the substance of this recommendation.
RECOMMENDATION 6 1.57 The Committee recommends that sub-clause 42(2) be amended to require the Minister to ensure that the Land Agency Board has membership that demonstrates expertise in landscape architecture and ecologically sustainable development.	Agreed The Bill has been amended to include the option for expertise in these areas.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 7 1.58 The Committee recommends that clause 86 be amended to require that estate development plans demonstrate ecologically sustainable development.	Agreed in principle. The Committee's recommendation can be achieved by other means. Sustainability is an integral part of the Territory Plan, reflected through the proposed statement of strategic directions and at the more detailed level, through appropriate controls in codes. All development proposals, including estate development plans are required to demonstrate how they achieve sustainability, as they are assessed against the Territory Plan codes, which embody principles of sustainability.
RECOMMENDATION 8 1.59 The Committee recommends that 'the landscape setting and biodiversity corridors' be inserted before 'infrastructure works' in paragraph 86(3)(b).	Noted. These are matters considered at the structure and concept planning stages. Estate development plans give effect to and must be consistent with these plans.
RECOMMENDATION 9 1.60 The Committee recommends that decisions on merit track and impact track assessments be required to demonstrate or address consistency with ecologically sustainable development, through amendments to clause 111, 112 and 120.	Agreed in principle. The Committee's recommendation is achieved by other means. As stated previously, all development proposals are required to demonstrate how they achieve sustainability, as they are assessed against the Territory Plan codes, which embody principles of sustainability. In addition, for proposals in the impact track, sustainability issues will be addressed as part of the environmental impact statement.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 10 1.61 The Committee recommends that where an approval would be inconsistent with an entity's advice the Minister should be required to make the decision and provide a response to the entity as to why the entity's advice is not being followed. The Minister's response should also be tabled in the Legislative Assembly.	Not agreed. The Minister does not have an ongoing role in the assessment of development applications, except where exercising the call in power under s145. Following discussions with agencies, protocols are to be drafted to establish principles for resolving conflicting advice. This will ensure that applications, apart from those that may be called in by the Minister under section 145, are approved consistent with original agency advice or a negotiated and agreed variance of that advice. In the event of an application being called in by the Minister, the provisions of Division 7.3.5 require the Minister to table a statement in the Assembly including details of the decision and the grounds for it. If an agency's advice were not taken in such an approval, the grounds for the decision would include the reasons why.
RECOMMENDATION 11 2.21 The Committee recommends that clause 71 be clarified so that if the Committee has resolved to inquire into a draft plan variation the Minister must not make a decision about the variation until the Committee has reported.	Agreed in principle. The Bill has been amended to clarify the Territory Plan variation process if the Assembly resolves that a review of a Territory Plan variation should be undertaken.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 12 2.25 The Committee recommends that a new sub-clause be inserted in clause 67 requiring the Minister to provide a set of the documents referred to in sub-clause 67(2) to the appropriate Assembly committee, and the note to clause 67 omitted.	Agreed in principle. The intent of this recommendation is given effect through section 70(2) of the Bill.
RECOMMENDATION 13 2.26 The Committee recommends that the draft Bill be amended to enable the Legislative Assembly to extend the time available to an Assembly committee for inquiry and report on a draft plan variation beyond six months.	Not agreed. The effect of this recommendation is not conducive to achieving a planning system that is simpler, faster and more effective.
RECOMMENDATION 14 2.27 The Committee recommends that paragraph 147(2)(e) be amended to require the Minister's statement to address how the principles of ecologically sustainable development influenced the decision under section 148.	Agreed in principle. The Committee's recommendation can be achieved by other means. Sustainability is an integral part of the Territory Plan, reflected through the proposed statement of strategic directions and at the more detailed level, through appropriate controls in codes. All development proposals, including decisions made by the Minister, are assessed against these provisions.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 15 2.28 The Committee recommends that clause 14 be amended so that if the Legislative Assembly has resolved that the Minister should give the Planning and Land Authority a direction, and the Minister declines to do this, the Minister is required to explain his or her reasons for not doing so to the Assembly.	Agreed. The Bill has been amended to include this specific requirement.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 16 2.29 The Committee recommends the draft Bill be amended to require intragovernmental consultation in relation to instruments made under sub-clause 82(1)(b), 261(4), 263 and 278. Parliamentary Counsel and the Assembly should also consider whether these provisions and clauses 89 and 93 represent an inappropriate delegation of legislative power to the Executive.	▪ Not agreed, as to the first part of the recommendation. The provisions are within current drafting practice and not considered to be an inappropriate delegation of legislative power to the Executive. Amendment of the Bill to specify that there be intragovernmental consultation in relation to instruments made under these sections is considered unnecessary. Consultation with relevant agencies on the development of subordinate legislation, including instruments and regulations, occurs as a matter of course. These protocols are further enshrined by the recently revised Cabinet handbook, which seeks to ensure that matters are consulted on from the outset of policy development. ▪ Agreed in part, as to the second part of recommendation 16. The provisions are within current drafting practice and are not considered to be an inappropriate delegation of legislative power to the Executive. Section 82 of the Bill has been amended to provide appropriate levels of consultation. Section 89 and related sections are amended to better articulate the role of planning reports.
RECOMMENDATION 17 2.40 The Committee recommends that the Minister consider whether the Authority's role and functions are appropriately defined.	Noted. It is considered that the Authority's role and functions are appropriately defined.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 18 2.63 The Committee recommends that the ACT Government review Part 3.4 of the exposure draft Bill with a view to making its provisions consistent with those applicable to other ACT public service chief executives under the <i>Public Sector Management Act 1994</i> (ACT).	Noted. The Chief Planning Executive is a statutory appointment in accordance with the relevant planning legislation. It is not a Chief Executive appointment under the Public Sector Management Act. It is more appropriate for the chief planning executive to be a statutory appointee than a public servant chief executive because: • of the degree of independence the role has; • the chief planning executive focuses on specific planning and development matters rather than administering a department of state; and • the specific expertise required of the chief planning executive being unlike the broader leadership and management skills required of chief executives of portfolio departments. Chief executives of departments are engaged on contracts of up to five years (typically five years). The contract can be terminated for operational reasons with 8 weeks notice. There are greater protections for the Chief Planning Executive than for chief executives as the Chief Planning Executive can only be removed in specific circumstances – that is, misbehaviour, physical or mental incapacity or being convicted of a serious offence.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 19 2.64 If the government does not agree with the recommendation above, the Committee recommends that the rules of natural justice and other due process procedural safeguards be required to be afforded the Chief Planning Executive when the Executive considers the suspension or termination of his or her employment, and when the matter comes before the Assembly. Similar safeguards should be inserted in other legislation providing for the suspension or removal of independent office holders.	Noted. The Government considers that there are sufficient safeguards in the legislation.
RECOMMENDATION 20 2.65 The Committee recommends that the Government respond to the Standing Committee on Public Accounts' <i>Review of Auditor-General's Report No 2 of 2005: Development Application and Approval Process: Report 7</i> at the same time as it responds to the recommendations of this report.	Agreed. The Government response to the Standing Committee on Public Accounts' <i>Review of Auditor-General's Report No 2 of 2005: Development Application and Approval Process: Report 7</i> is to be tabled at the same time as the response to the recommendations of this report.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 21 2.74 The Committee recommends that the short timeframes highlighted by the Committee be reconsidered in view of the ACT Government's <i>Community Engagement Manual</i>.	Not agreed. The Government has considered the Committee's recommendation, however in order to deliver a simpler, faster and more effective planning system, improved timing for community engagement, and clarification of role of community engagement at different stages of the planning process, is crucial. Embedded in the reforms and consistent with the Community Engagement Manual, is the philosophy that the most important and substantive community engagement should occur when policies are developed. Other community engagement activities, such as notice of a development application, are informative engagement, providing advice of transactions that occur within an agreed policy framework. Timeframes in the Bill have been set in the context of this philosophy, having regard to existing statutory timeframes, the ACT Government's Community Engagement Manual and with a view to balancing the divergent needs and expectations of various stakeholder groups. For community engagement on policy matters, minimum periods are established, allowing timeframes to be extended as appropriate.
RECOMMENDATION 22 2.87 The Committee recommends that consideration be given to moving sub-clauses 142(2)–(4) and Part 7.4 into Chapter 11 to co-locate the offence and civil liability provisions.	Noted. Consideration has been given to the recommended change, however, it is considered appropriate that these provisions be co-located with provisions that relate to the associated activities where the offence may arise.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 23 2.95 The Committee recommends that the Bill be amended to require the Planning and Land Authority to consult with the Conservator of Flora and Fauna and the Environment Protection Authority when compiling the list of consultants under clause 197, and when drafting regulations under the Act.	Noted. The Committee's recommendation can be achieved by other means. An amendment to the Bill is not considered necessary, as the need for this consultation will occur as a matter of administrative practice.
RECOMMENDATION 24 2.96 The Committee recommends that the operation and wording of clause 197 be clarified following further consultation with the Department of Treasury, with a view to ensuring consistency with the aims of the ACT Government's procurement framework even if that framework is not directly applicable.	Noted. This provision has been deleted and given effect through regulation making powers in the Bill. Treasury has been and will continue to be consulted in relation to such matters.
RECOMMENDATION 25 2.97 The Committee recommends that the Authority be required to review the list of consultants referred to in clause 197 every three years through a public and transparent process.	Noted. This provision has been deleted and given effect through regulation making powers in the Bill. Treasury has been and will continue to be consulted in relation to such matters.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 26 2.103 The Committee recommends that the Bill be amended to require that the custodian of public land not be the same person or entity as the Conservator of Flora and Fauna.	Noted. It is not considered necessary to specifically provide for this in the Bill. The role of the Conservator to protect areas public land is adequately provided through other provisions of the Bill. In addition, the Conservator is currently a public servant employed by the Department of Territory and Municipal Services. The role of the Conservator within that department does not include land custodian responsibilities. The Administrative Arrangements Orders made by the Chief Minister in accordance with the Australian Capital Territory (Self-Government) Act 1988 (C'wth) and the Public Sector Management Act 1994, inform custodianship responsibility at an agency level. In addition, the map provides details of custodian responsibility at an administrative unit level, as appropriate. The custodianship map provisions of the Bill have been amended to state that the custodianship map will "reflect", rather than "give" administrative responsibility for, unleased land and public land in the ACT to more accurately reflect the relationship between the map and the Administrative Arrangements Orders.
RECOMMENDATION 27 2.108 The Committee recommends that the exposure draft Bill be clarified with respect to the role of the Public Advocate in relation to controlled activity orders.	Agreed. The Bill has been clarified with respect to the role of the Public Advocate in relation to controlled activity orders.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 28 2.146 The Committee recommends that sub-clause 374(1)(a) be amended to replace the word 'the' before 'land' with 'their'.	Not agreed. The effect of this amendment would be to link the demonstration of material detriment to the use or enjoyment of an entity's use of their own land (not including the land being developed, or other land they may enjoy the use of, but do not own). This would be potentially inequitable if the land being developed, or land adjoining that land, is a public place or facility (for example, sports field, park etc) and the development is impacting on an entity's enjoyment of that public place.
RECOMMENDATION 29 3.25 The Committee recommends that sub-clause 50(2) be amended to require the Territory Plan to include future urban areas and reserved areas of public land.	Not agreed. The compulsory contents of the Territory Plan under 50(1) are items that are fundamentally necessary to enable the Territory Plan to function. The delineation of future urban areas and public land, while an important part of the Territory Plan, are not fundamentally required for the Plan to operate. Further, the location of future urban areas is a relatively changeable aspect of the Territory Plan and for this reason, does not sit comfortably within the compulsory contents of the Territory Plan. Substantial areas of public land are already identified in the Territory Plan map as a matter of common practice.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 30 3.26 The Committee recommends that the draft bill require a transparent consultative process, with a report to the Legislative Assembly, concerning the development of the new Territory Plan and its component parts.	Agreed. The Bill has been amended to provide a special provision regarding the making of the new Territory Plan. Consultation on the detailed elements of the Territory Plan has commenced. The Territory Plan will be presented to the Assembly, including a consultation report. Once the new Territory Plan has been adopted, any subsequent amendments will go through the standard process for plan variations.
RECOMMENDATION 31 3.27 The Committee recommends that the draft Bill be amended to require the components of the Territory Plan to be reviewed after 30 months of operation initially, and five-yearly thereafter, unless the Minister requires an earlier review.	Not agreed. The Territory Plan is reviewed on an ongoing basis, and there is a provision requiring the Authority to consider whether a comprehensive review is required every 5 years. In addition, the Bill provides for the Minister to direct that the Territory Plan or part of it be revised, or that it be reviewed.
RECOMMENDATION 32 3.35 The Committee recommends that 'planning report' be better defined in the draft Bill.	Agreed. The Bill has been amended to better articulate the role of the planning report.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 33 3.43 The Committee recommends that the function of the Statement of Planning Intent and the Statement of Strategic Directions be combined and the Statement of Planning Intent omitted.	Not agreed. The different instruments perform very different functions. The <u>Planning Strategy</u> is intended to be a highest level document setting out the long term planning strategy for the ACT (beyond the election cycle) as envisaged by the Government of the day. It is a political document and as such is not a part of the Territory Plan and has no relevance to development assessment or court decisions. The document has two key functions. Firstly it will facilitate community debate on the Government's approach to long term planning and as such improve the accountability of the Government's position. Secondly, the document will have one and only one legal function that is to be a document, which must be considered when looking at proposals to vary the Statement of Strategic Directions of the Territory Plan. In this sense the Planning Strategy provides context, guidance to the preparation of the more concrete, detailed statement of strategic directions in addition to the National Capital Plan.

RECOMMENDATION	GOVERNMENT RESPONSE
	The <u>Statement of Planning Intent</u> is the vehicle for the Minister to give overall directions to the Authority on planning principles and guide the Authority in its interpretation of the Territory Plan and operations. This document then has a more specific audience (the Planning and Land Authority) and a more specific role (representing the views of the Minister for the current election cycle on the approach of the Authority) than the whole of Government Planning Strategy. The <u>Statement of Strategic Directions</u> is a part of the Territory Plan. It is the vehicle for the translation of the high level political goals of the Planning Strategy into the more precise, more detailed Territory Plan. This instrument unlike the Planning Strategy does apply to development assessment decisions and court decisions (for impact assessable matters). It sets out high level planning considerations for the long term but in a more concrete, detailed manner than the Planning Strategy. It will contain requirements that are sufficiently specific to guide individual development assessment decisions.
RECOMMENDATION 34 3.44 The Committee recommends that the relationship between the Planning Strategy and the Statement of Strategic Directions be clarified.	Noted. See response to Recommendation 33, which describes the relationship between the Planning Strategy and the Statement of Strategic Directions.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 35 3.45 The Committee recommends that sub-clause 101(4)(a) be clarified so that it is more consistent with the human rights of freedom of thought and expression.	Agreed. Sub-clause 101(4)(a) has been amended to add the words “in the exercise of their functions under this Act.”
RECOMMENDATION 36 3.46 The Committee recommends that sub-clause 86(2) be amended to require an estate development plan to recognise and respond to the landscape setting in which the proposed estate would be located.	Agreed in principle. The Committee’s recommendation can be achieved by other means. These are matters considered at the structure and concept planning stages. Estate development plans give effect to and must be consistent with these plans.
RECOMMENDATION 37 3.70 The Committee recommends that the draft Bill require public notification and a reasonable consultation period for strategic environmental assessments and environmental impact assessments, both before and after their preparation, and before submission to the Minister.	Agreed in principle. The Committee’s recommendation with respect to strategic environmental impact assessment can be achieved by other means. Regulations will provide for the procedures and minimum content of a strategic environmental assessment, also providing for an appropriate level of public consultation in light of the varying functions a strategic environmental assessment may have in the planning system. With respect environmental impact statements, the Conservation Council agrees that consultation is most appropriate at the draft stage of an environmental impact statement rather than at the scoping stage. The Bill has been amended to reflect this.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 38 3.71 The Committee recommends that planning reports, environmental impact assessments and strategic environmental assessments be made notifiable instruments.	Noted. The intent of the Committee's recommendation can be achieved through other means. The Bill provides for these documents to be made public where that is appropriate. For example, planning reports or strategic environmental assessments undertaken in relation to a Territory Plan variation will not be notifiable, but will be made public as part of the documentation for the variation when the variation is tabled. Environmental impact assessments required in relation to a development application will be publicly notified with the development application and available for public inspection.
RECOMMENDATION 39 3.72 The Committee recommends that consideration be given to whether Part 5.6 of the Bill, 'Planning reports and strategic environmental assessments' should be moved into Chapter 8, and be titled more broadly, such as 'Sustainability assessments and inquiries'.	Noted. Consideration has been given to the Committee's recommendation, however, it is considered that this recommendation would conflict with the policy decision taken that a clear distinction should be made between planning policy documents (for example, Strategic environmental assessments) and site-specific assessments (for example, planning reports). Strategic environmental assessments and environmental impact assessments are co-located with the processes for Territory Plan variation and development assessment to better integrate the assessment tools with the processes to which they relate.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 40 3.85 The Committee recommends that the exposure draft Bill be amended to allay the concerns raised by the ACT Law Society and other stakeholders in relation to use as development.	Agreed. The Bill has been amended, in response to concerns raised by stakeholders, to clarify the intent of the provisions in relation to the regulation of use as development.
RECOMMENDATION 41 3.102 The Committee recommends that clauses 224 and/or 225 be amended to require the Authority to consult with other agencies before granting a concessional lease.	Agreed in principle. The Committee's recommendation can be achieved by other means. These sections of the Bill relate to a determination about whether an existing lease is concessional. Agency consultation is part of the process for granting concessional leases, whether by direct grant or by a competitive process (auction, tender or ballot). This occurs through the Cabinet process, in the case of a direct grant. Alternatively, land is sold competitively, following an informed planning process, including consultation with other agencies, which has identified the need for community facilities land (for example, release of land in a new subdivision).
RECOMMENDATION 42 3.103 The Committee recommends that the ACT Government review clause 259 with a view to amending it to ensure that everyday transactions are not deemed unlawful.	Agreed. The Authority is continuing to work with stakeholders to resolve concerns raised in relation to this provision, with a view to resolving a mutually satisfactory outcome and making any necessary amendment to the Bill.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 43 3.132 The Committee recommends that the draft Bill provide for developments to be moved between tracks where appropriate.	Agreed in principle. The Committee's recommendation can be achieved by other means. Amendments to the Bill are not considered necessary as the clarification of this matter is to be addressed through administrative arrangements and the Territory Plan.
RECOMMENDATION 44 3.133 The Committee recommends that sub-clause 148(3) be amended so that the Authority cannot amend a tree management plan unless this is consistent with the advice of the Conservator of Flora and Fauna (as under sub-clause 119(3)).	Not Agreed. The distinction is consistent with the Tree Protection Act that accords a higher level priority to the protection of registered trees and declared sites [Section 119(3)] than regulated trees [Section 148(3)]. In the former case it is not open to the Planning and Land Authority to approve development impacting on the registered tree/declared site on the basis that the wider requirements of government policy and the Territory Plan so require. In the latter case, the Authority can do so if it considers that such wider considerations apply (the Authority has the power to directly approve a tree management plan in the development approval). The protection of the registered tree/declared site has priority over other planning considerations but this is not the case for regulated trees. This approach mirrors the provisions in the current Land Act.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 45 4.10 The Committee recommends that the custodianship map created and maintained by the Planning and Land Authority which gives administrative responsibility for unleased land and public land in the Territory be approved by the Chief Minister when first made, and that the Chief Minister approves significant amendments to it.	Agreed in principle The Administrative Arrangements Orders made by the Chief Minister in accordance with the Australian Capital Territory (Self-Government) Act 1988 (C'wth) and the Public Sector Management Act 1994, inform custodianship responsibility at an agency level. In addition, the map provides details of custodian responsibility at an administrative unit level, as appropriate. The custodianship map provisions of the Bill have been amended to state that the custodianship map will "reflect", rather than "give" administrative responsibility for, unleased land and public land in the ACT to more accurately reflect the relationship between the map and the Administrative Arrangements Orders.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 46 4.11 The Committee recommends that the custodianship map recognise and represent in broad terms the spatial range of stewardship responsibilities assumed by not-for-profit organisations in relation to unleased land and public land, and that the map acknowledge the ongoing associations with Territory land expressed and valued by Indigenous Australians in the Territory. The need for disclaimers preventing any legal consequences from this ‘informational’ recognition should be considered.	Not agreed. This recommendation goes beyond the intended scope of the custodianship map, which has been to clearly define administrative responsibility for tracks of unleased Territory Land and Public Land.
RECOMMENDATION 47 4.19 The Committee recommends that the management objectives referred to in clauses 278 and 280 and Schedule 3 of the draft Bill be amended to better accord with the general principles developed by the National Reserve System Task Group to implement the National Resource Management Council’s <i>Directions for the National Reserve System – A Partnership Approach</i> (2005), and that plans of management are consistent with these when and if the principles are endorsed by the relevant Ministerial Council.	Noted. This recommendation would require a level of investigation and policy development that is beyond the scope of the current reform agenda. This matter is to be considered further at a later date.

RECOMMENDATION	GOVERNMENT RESPONSE
RECOMMENDATION 48 5.5 The Committee recommends that the need for the relatively minor and technical amendments in Table 1 be considered.	Noted. See response to individual minor and technical amendments.

Government response to Planning and Environment Committee – Table 1 for Recommendation 48

- Additional suggested minor and technical amendments

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
14(2)(b) amend to require Minister to provide a statement of reasons as to why the Assembly's recommendation will not be implemented	Agreed. See main response to Recommendation 15.
31(4)(a) omit 'the main object of'	Agreed. The Bill has been amended.
28 amend to require public register to be accessible via the Internet	Not agreed. There are technological and privacy issues associated with making this amendment. The Bill provides capacity for making the public register accessible via the internet at some time in the future if and when that becomes a viable course of action.
49 replace 'authority' with 'entity'	Not agreed. "Territory authority" is defined under the Legislation Act as "a body established under an Act, but does not include a body declared by regulation not to be a territory authority". This is the type of body that is to be covered by this provision. The phrase "territory entity" is not defined and risks ambiguity and possible involvement of non-government entities, which is not the intention.
50(2) replace 'may, but need not' with 'shall' in respect of paragraphs (a) and (b)	See main response to Recommendation 1.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
51(1) replace 'may' with 'shall'	Not agreed. "May" is the correct term in this context.
54 include requirement for public consultation and report to the Legislative Assembly on the restructured Territory Plan	See main response to recommendation 1.
61(1)(a) amend to require documents to be available on the Internet	Not agreed. The Bill sets out the minimum requirements, which does not prevent the use of the internet.
64 amend clause 64 to require the Authority to include an explanation in the documents given to the Minister and the Assembly committee explaining the reasons for the non-disclosure of part of the Territory Plan	Not agreed. Providing reasons for non-disclosure may raise privacy or security issues.
Part 5.6 (clauses 89- 93) include a requirement for public participation in the preparation and review of strategic environmental assessments	See main response to recommendation 37.
72(1)(b) Replace 'report' with 'draft variation'	Agreed. The Bill has been amended.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
77(3) clarify intent	Not agreed. Clarification not considered necessary.
101(4)(a) omit or clarify	See main response to Recommendation 35.
105(2) the decision that a development application is in, or not in a particular track should be reviewable	Not agreed. Whether or not a particular development applications falls in a particular track is function of the Territory Plan, rather than the outcome of a decision by the Authority.
111(2) where approval would be inconsistent with an entity's advice the Minister should be required to make the decision and to provide the reasons why the entity's advice is not being followed	See main response to Recommendation 9.
111(3) replace first-appearing 'an' with 'a'	Agreed. The Bill has been amended.
116(4)(b)(i) insert 'frequency' after 'size'	Agreed. The Bill has been amended.
122 omit 'applies'	Agreed. The Bill has been amended.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
123 clarify the intent of this clause	Not agreed. This section ensures that all development proposals that are not anticipated by the development tables of the Territory Plan, or the exemption regulation, are impact assessable. This is important to ensure that development that has not been anticipated undergoes rigorous assessment.
124 replace 'may be proceeded' with 'may proceed' as this is simpler language	Agreed in principle. This provision of the Bill has been rewritten and the language refined.
126 Is it usual for structure plans for future urban areas to specify which entities are permitted to undertake development in the area?	Noted. This provision ensures appropriate long term planning in relation to future urban areas.
127 insert clearer exclusionary threshold criteria for consideration of development proposal (Native Title Act precedent?) amend 127(2)(4) as it is too open-ended and unjustifiably negates the statutory obligation of 127(2)(a)-(e) and 127(3).	Agreed. The Bill has been amended to spell out in more detail when the decision would not be binding.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
141, 142 these provisions should include a requirement that the Authority make a reasonable effort to notify all adjoining places	Not agreed. The proposed amendment is not necessary. There is an obligation on the Authority to notify unless section 141(4) applies. Section 141(4) states that the Authority need not notify if this is impractical. In practice, as a result of court decisions, a high threshold applies in determining what is impractical, resulting in few circumstances in which the Authority would not notify adjoining leaseholds. For example, where an adjoining property is vacant and no forwarding address is available.
156(2) 'if the application contains information': should this read 'if the Authority has given the applicant information...'?	Not agreed. The current drafting is correct, conveying the intention that the prescribed application form include information about a right of appeal in case of a deemed refusal. It is not the intention to oblige the Authority to provide additional information to that provided in the application form.
157(3) omit	Not agreed. This provides the planning and land authority with flexibility in relation to considering advice given by referral entities.
158(2)(b) amend to require that the Authority make a reasonable effort to contact people who have made a representation about a development application	Not agreed. In light of recent court decisions, this amendment is not considered necessary.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
174(3) include a requirement that the Authority consult with referral agencies when reconsidering the original decision or any new information received in relation to a development application	Not agreed. Referral to agencies during the reconsideration of an application is not necessary, as the proposal being considered is substantively the same as the original development application.
179/181, Schedule 2 are the differences in penalties for development inconsistent with an approval, and development inconsistent with an approval condition intended?	Noted. The inconsistency has been addressed.
185 insert a requirement for consultation with referral agencies	Agreed in principle. This will be addressed by regulations.
187 insert a requirement for consultation with referral agencies	Agreed in principle. The Bill has been amended to enable the Authority to prescribe entities by regulation that may or must be consulted.
188 omit 'and' in para 188(1)(b) and insert after para (c) (deleting full stop), 'and, (d) by notifying persons who have agreed to receive Authority notifications by electronic mail.'	Not agreed at this time. The Bill has been amended so that public consultation will occur at the stage of the draft EIS rather than at the scoping stage. Electronic notification of a draft EIS may be possible at a later stage as the Authority's technological capability is enhanced.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
191(2) the Authority should be required to indicate why any matters that were raised in consultations were excluded from the EIS	Noted. The Bill has been amended so that public consultation will occur at the stage of the draft EIS rather than at the scoping stage. The Authority must be satisfied, when considering the revised draft EIS, that a proponent has taken all representation received on the draft EIS into account.
196 amend to require the Minister to present an EIS to the appropriate Assembly Committee	Not agreed. Presentation will remain optional.
197 is this intended to refer to a list of EIS consultants rather than the people to be consulted, or both? It should include principles consistent with the Government's procurement framework. Amend to require the Authority to consult with the Commissioner for the Environment and the Conservator of Flora and Fauna and to provide a copy of the list to the appropriate Legislative Assembly committee. This clause also should include a requirement for periodic review.	See main response to Recommendation 23.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
276 add 'biodiversity corridor' and 'designation under an international agreement to which Australia is a party'	Noted. The addition of new "reserved area" categories for public land requires further investigation, which is outside the scope of the current reform agenda. To be considered for possible implementation at a later stage.
286(c) include a requirement for the report to provide a written explanation of the proponent's response to the comments provided during the proponent's consultation	Agreed in principle. However, an amendment to the Bill is not necessary. This is already the effect of section 286(c) and is what occurs in current practice.
375 insert a requirement for public consultation on guidelines for the exercise of the Minister's powers under the Act	Not agreed. Mandatory public consultation is not considered appropriate.
380 insert a sub-clause specifying the minimum requirement for developing key recommendations such as a mandatory requirement to involve referral agencies and criteria for when public comment will be sought	Not agreed. Regulations where appropriate will stipulate consultation requirements. Agencies will be consulted during the development of these regulations.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
Dictionary include a definition for 'executive', referring to the Legislation Act 2001 (ACT) and Australian Capital Territory (Self-Government) Act 1988 (Cwlth)	Agreed. The dictionary notes in the Bill make an appropriate cross-reference to the Legislation Act 2001.
Dictionary include a definition for environment that includes social aspects as well as biophysical aspects (e.g. subsection 4(1) of the Environment Protection Act 1997 (ACT))	Agreed. The Bill has been amended.
Dictionary include a detailed definition for biodiversity corridor (pulling across Schedule 4 definition) but amend it to recognise the biodiversity corridor value of urban open space	Not agreed. The Bill provides a specific definition as appropriate for Schedule 4.

P&E COMMITTEE - SUGGESTED AMENDMENT	GOVERNMENT RESPONSE
Dictionary define 'newspaper' to mean the daily newspaper sold in the Territory that has the highest average daily circulation	Not agreed. It is not appropriate to attempt to define 'newspaper' under the Bill. The paper with the highest circulation may not necessarily be the best paper, a local paper may be more appropriate in some cases. It is considered appropriate for the Authority to continue to exercise its discretion in this regard, which has not been problematic to date.
Schedule 1, item 2, column 2 replace section 148 with 148(1)(b) for consistency?	Not agreed. This amendment is unnecessary, the current provision has proper effect.
Schedule 4, Part 4.2, column 2, item 8 omit paragraphs (a) and (b)	Not agreed. The standards established in the Schedule are designed to capture venues with likely significant impacts.

Additional and dissenting comments - Mr Zed Seselja MLA

Mr Zed Seselja	Government Response
RECOMMENDATION 1 1.5 Clauses which grant standing for third party appeals should be amended to ensure that organisations cannot be established specifically to gain standing	Not agreed. This would appear to be an unreasonable restriction on the ability of people to form associations for a variety of purposes. This provision, and related ones, will be monitored after implementation.