



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES  
Ms Jo Clay MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),  
Mr Mark Parton MLA

## Submission Cover Sheet

### Inquiry into Planning Bill 2022

**Submission Number:** 32

**Date Authorised for Publication:** 22 November  
2022

## THE ACT PLANNING BILL 2022 -GNCA COMMENTS AND RECOMMENDATIONS

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Dear Committee on Planning, Transport and City Services

The Griffith Narrabundah Community Association (GNCA) is grateful/enthusiastic for the opportunity to comment on the ACT Planning Bill 2022. Our Association is over 20 years old, and we have over 450 members. Our recent experiences in dealing with ACTPLA and ACAT give us heightened awareness of some of the shortcomings of the present system, and the basis to make considered suggestions on the proposed new planning system. We have already made several recommendations to the current Planning Review process.

Part 1 of our comments summarises our main concerns we have with the Bill and Part 2 provides more detail on some of the key issues.

### PART 1 Summary of Concerns

#### 1. Articulate the benefits

We would like to endorse the government's Project Purpose "*To deliver a planning system that is clear, easy to use and that facilitates the realisation of long-term aspirations for the development of Canberra while maintaining its valued character*"

We also support the first two of the government's Project Objectives:

1. *"Enabling resilience and sustainability of Canberra without compromising its valued character; and*
2. *"Providing trust and clarity of processes, roles and outcomes for the city's community."*

What is missing from the Bill is an introductory statement that explains what is wrong with the current planning system and how the new proposals will improve the situation.

***R1 The government should provide a statement that outlines what is deficient in the current Planning System and explain how the new proposals will improve the situation.***

#### 2. Redraft the Object of Act

Unfortunately, the Bill fails to deliver on either the Project Purpose or these two Objectives. It might provide trust and clarity of processes, but it does not provide trust, confidence or clarity on the outcomes.

The wording of 7 (1) the Object of Act is so vague nobody would ever know if the Object had been attained. For example, how well would anybody know if the Object had been achieved when it is:

*“to support and enhance the Territory’s liveability and prosperity, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system that is outcome focussed.”*

Outcome focused is not defined, will it be any good?

Ask anybody in the street or at the barbecue what it means, and they would ask if you were serious.

In any case, all the clauses from 7 (1) (a) through to (3) (e) are **not** Objects they describe **actions** to achieve the Object. This is totally unsatisfactory.

**R2 The Object of Act Part 2.1, 7 of the Act should be redrafted. The Object should include words like climate change, sustainability, resilience and canopy cover, because these are going to be vital for the future development of the ACT.**

**R3 The words outcome-focused should be defined and it should be explained why this will be necessary and how it will work in practice.**

The meaning “outcome-focused” is not defined and in any case, this should be a way to achieve the Object of the Act not part of the Object.

### **3. Trust, transparency, certainty and clarity**

These issues were raised at the community forums. People want to know what can be built next to them. They want certainty so that when they purchase a home, they can trust the system to have the appropriate rules in place. We do not want Manor Houses built at random in ZR1 zones and we do not want three dwellings in a zone that is primarily reserved for single dwellings. Knockdown re-builds remain not reviewable. These are the most common causes of anger and outrage in suburban areas and yet the government is still ignoring residents’ desires. Certificates issued for by Certifiers for non-compliant buildings. No consultation, no accountability. Where are the Penalties, suspensions, accreditation withdrawal, removal of the non-compliant aspects of the building at the Certifiers cost?

We cannot understand how there can be certainty, trust, transparency and clarity without a whole/prescriptive set of measurable rules – and these must be mandatory. Qualitative criteria are next to worthless. Particularly as ACTPLA does all the assessing, behind closed doors. ACAT does not look at qualitative parameters.

We therefore recommend that;

**R4 Appropriate Rules are incorporated into Territory Plan so that Trust, Transparency, Certainty and Clarity can be maintained. ACTPLA consult with Community Groups before the detailed rules are adopted.**

**R5 Applications for knockdown re-builds should be available for review.**

### **4. Consultation**

Good governance flows from good/genuine, open, transparent consultation. This Bill lacks provision for proper consultation. The TPA should be required to exercise its functions in accordance with principles of good consultation (cl18(3)). The promulgation of those principles in accordance with best practice should be mandated. There should be pre-DA consultation, especially when a change is proposed to the Plan or a lease or

anything else on which Canberrans rely. The Act should provide for amendments to it to come from consultation with citizens and not just proponents and the Minister (cl.18(1)(b), 54,55). Consultation should be required before any proposed changes to planning and district strategies (cl.41). The minister should be required to consult on whether to change consultation strategies (cl 12(4) and review the Plan (cl88(2)(b)). If the Act shows that the legislature values consultation it stands more chance of being embedded in the culture of the TPA that serves the Canberra people. (Recs 1(a)-(f), 9,10)  
***R6 Pre-DA consultation must be re-installed, especially where lease variations are involved.***

## **5. Reduce ACTPLA discretion**

The Bill has excessive executive overreach and the unaccountable TPA discretion should be reduced. This is currently a real issue for Canberrans, the lack of transparency and accountability. The Legislative Assembly should insert greater monitoring, scrutiny and control of the TPA by the Legislative Assembly. The TPA Director-General has extensive powers (cl 18). The term of the Director-General should be limited given the potential for corruption, lack of trust and importance of property rights. The Chief Planner also has extensive powers (Part 3.4) and should not be the TPA Director-General in the interests of contestability, professionalism, trust and avoidance of corruption. ACT planning and land management must be publicly accountable. (Recs 6(a)-(e))

***R7. Different people should be appointed to the positions of Director-General and Chief Planner. The Chief Planner should report directly to the Minister and the Legislative Assembly***

## **6. Review of TPA decisions**

The effects of unfettered decision making by the TPA can include fraud and corruption, loss of trust, lack of certainty and erosion of civil society. Merits review and reconsiderations of decisions provide an important accountability and supervision function that can assist with quality assurance. This Bill should contain provisions to maximise the value of administrative reviews. They should include:

- aligning with the Bill with the ACAT Act;
- requiring ACAT to review the original DA decision and not allow subsequent altered plans;
- requiring the tribunal to order re-notification if a DA is varied (cl 167);
- limiting the number of times information can be requested from the proponent under cl 165;
- allowing review of a decision made contrary to entity advice (cl 187);
- providing for penalties against the TPA for pressuring entities to approve DAs; and requiring the TPA to conduct quality assurance. (Recs 5(a)-(e)).

It is not clear how ACAT will function in an Outcome-Focused world.

***R8 ACAT reviews should be streamlined and there should be stronger links between the Territory Plan and ACAT decisions.***

## PART 2 ATTACHMENT TO GNCA SUBMISSION ON ACT PLANNING BILL 2022

No	Provision	Recommendation
1	7(2) Objects cl improvements	The object of ecologically sustainable development listed in 7(1) needs clarification in the intentions of the planning system in (2).  Insert 7(2)(g) Promote high standards for the built environment with an emphasis on tree protection, canopy cover, sustainability, energy efficiency and the incorporation of renewable energy resources.
2		Insert compatibility with other legislation including the Urban Forest Bill 2022.
3		Insert requirement for coordinated approach to open space and the urban environment throughout Canberra.
4		
5	7(3) Considerations in applying objects improved	Financial principles including value for money are not listed as a separate consideration.  Ecologically sustainable development is arguably incorrectly defined as 'achievement of economic growth and prosperity' (1(b)).
6	8(3) says subcl (2) is a guide to readers	The guide to readers should be part of the Act or in the Explanatory Memorandum (EM) or brochure.
7	9 intergenerational equity principle clarification	Should refer to <u>generations</u> as the 2021 census shows the main current generations in Canberra are Boomers, Millennials and Gen X.
8	9(2) Order of list	This list is in the wrong order: apply cl 9 order to re order.
9	10(2)(b) "high quality" clarification	Insert 'appropriate' before high quality because otherwise there is no constraint on quality.
10	Investment facilitation principles improved	Should explicitly recognise the importance of land to people to underscore the need for certainty in not using planning tools as playthings to be altered at random when

		peoples' investment in their homes is often their main form of investment.
11	11 Consultation clarified	Define stakeholders. The list should include – at a minimum – the owners and residents in adjacent (as per the Territory Plan definitions) houses including next door and over the back fence.
12	11 Consultation clarified	Require the TPA to exercise its functions in cl 18 in accordance with principles of good consultation – as defined.
13	12(4) Consult on Minister's review of consultation guidelines	The Minister should be required to consult on whether to change the guidelines – using principles of good/genuine, open, transparent consultation.
14	13 Consultations to accord with requirements under the Act.	It would be useful to have the times consultation is required under the Act listed – perhaps in the EM. The TPA, citizens and proponents will need a list and they could usefully be in the Act.
15	18 Functions of TPA	
16	18(1)(b) broaden group who can propose amendments to the Plan that beyond proponents and Minister	Include ordinary citizens as people who can suggest amendments to the Territory Plan.
17	18(3) TPA to consult in exercising its functions	Include in the list of ways the TPA exercises its functions: (d) in accordance with the principles of good consultation in section 11.
18	After cl 24 insert new section	The Minister and the TPA should also be required to work with the Legislative Assembly to encourage cohesive planning and development of land.
19	In cl 26 insert new subsection limiting extension of Chief Planner's appointment.	The Chief Planner's term of appointment should be limited to one term – see, for example, Australian Federal Integrity Commission Bill 2022 cl 191. (Noting that s.645 of this Bill provides for the term of the current chief planner to run its term.) Also, there should be a requirement that the previous Chief Planners cannot be appointed as a consultant for a specified period.

20	Insert new section	There should be a requirement that different people be appointed to the position of Chief Planner and head of the TPA.
21	Insert new section	Include in the Chief Planner's functions the need to report directly and regularly to the Minister and Legislative Assembly
22	38(1) change "may" to "must"	A district strategy must be required.
23	41 include consultation	The TPA Executive should be required to consult with local community associations and other interested persons before deciding whether to review planning or district strategies.
24	42 change "may" to "must"	The Minister must give statement of planning priorities to the TPA.
25	46 define efficient environment	Define "efficient environment" in object of Territory Plan. i.e. ensure that the object of the Territory Plan makes clear that environment includes the physical environment and so recognise the impact of climate change on the Canberra community.
26	Part 4.2 consultation	Subdivision design applications should have public consultation.
27	54 Define interested persons more broadly	Interested persons should include citizens. Why is it just proponents? Community associations are interested persons. Also adjacent neighbours and local residents should be included.
28	55 expand those who can initiate amendments to the Plan	Community associations and ordinary citizens should be able to initiate amendments to the Territory Plan.
29	88(2)(b) Minister consultation on review of Plan	The "may" should be changed to "must." It should be mandatory for the Minister to consult on whether to review the Plan.
30	138(4) limit number of conditions on DA	Limit the number of conditions that can be placed on a DA. Require that they concrete, specific and objectively assessable. It is not sufficient that the conditions merely be a requirement for compliance.
31	164 insert new section	All government sponsored DAs should be required to comply with best practice environmental standards including water tanks, solar panels, insulation, active living standards etc

32	165(2) Limit number of TPA requests for more information on DA	<p>Limit the number of times the authority may ask for more information on a DA.</p> <p>(In one case the GNCA has contested, the proponent was asked for further information nine times. Twice they were begged to provide more information).</p>
33	Insert new section	<p>Insert a section requiring competitive neutrality in any activity undertaken by the TPA so that it restricts itself to its appropriate regulatory activities. Its job is to regulate. It currently devotes considerable public resources to guiding proponents to ensure that their DAs are compliant. The regulated are controlling the regulators.</p>
34	Insert new section	<p>Opponents of a development have no power to seek information from a proponent or to negotiate with them to produce an agreed outcome. Yet experience shows that this works. The Bill gives all the power to proponents and gives the TPA power to assist the proponents.</p>
35		<p>There is no provision requiring proponents to do pre-DA consultation, negotiation or mediation.</p> <p>Developments must be compliant with regular assessment as buildings progress through the construction stages. Builders and ACTPLA Assessors to be accountable.</p>
36	167 Corrections to DA notified	<p>Inform public about corrections/ amendments to DA.</p>
37	168(2) require TPA guidelines	<p>The TPA should be required to publish guidelines on adequate consultation and “the same DA”</p>
38	176(1)(b)(iii) insert new subsubsection	<p>Require additional public notification if a DA is changed so that more than three changes are made to the originally lodged plans.</p> <p>(In one of the GNCA cases before ACAT there have been six new sets of plans following those that were originally lodged. The changes have been significant. The DA has not</p>

		been re-notified. The many objectors to the original DA have not been notified. Because the matter is before ACAT the GNCA cannot notify its members of the changes.)
39	179(2) Limit the number of times the TPA can give DA non-compliance advice	<p>Limit non-compliance advice to once.</p> <p>Public resources should not be used to shepherd DAs through to compliance and the TPA should not be providing advice on planning matters more appropriately provided by private sector consultants.</p>
40		<p>Insert a section requiring competitive neutrality in any activity undertaken by the TPA to ensure that it restricts itself to its appropriate regulatory activities. Its job is to regulate. It currently devotes considerable public resources in an attempt to guide proponents to ensure that their DAs are compliant. The regulated are controlling the regulators.</p>
41	182(1)(b) and 184 Limit number of conditions that can be applied to a DA	<p>Limit the number of conditions that can be placed on a DA before it is approved. It is not sufficient that the conditions merely be a requirement for compliance. If approved, they must be compliant and the final approvals monitored onsite.</p>
42	Insert new subsection	<p>Require public notification of conditions imposed on a DA after the Notice of Decision is provided.</p>
43	Insert new subsection	<p>Require public notification of achievement of compliance with conditions, including to those who lodged an objection.</p>
44	183 (e) add social impacts	<p>See <i>Lourandos and Yiannokopoulos &amp; ACT Planning and Land Authority &amp; Ors (Administrative Review)</i> [2011] ACAT 25 at 59 [at 217].</p>
45	183 insert clarification that this is the decision making section for DAs	<p>This is the equivalent section to the current s.120 that has been interpreted by ACAT as not coming into consideration unless a DA has passed through a “gateway” i.e. The Tribunal has accepted that if a development proposal complies with all applicable rules and/or criteria, then, and only then, can the tribunal</p>

		consider the broader matters in section 120. ( <i>Noah's Ark Resource Centre v ACTPLA</i> [2017] ACAT 44). Subordinate legislation should not provide the gateway to an Act.
46	184 limit number of conditions	DAs that need more than three conditions should be assessed as non-compliant. They have already had several “bites at the cherry” and wasting ACTPLAs and the communities’ valuable resources. Eg costs of ACAT, evidence, witnesses time etc.
47	186 add that refusal is required when too many conditions are required	A DA should not have more than 3 conditions to be compliant. It has already gone through several opportunities for correction before it gets to this stage.
48	186 add that an imposed condition must require a response that is concrete, specific and objectively assessable	Neither the Planning Authority nor ACAT should be permitted to approve a DA by merely subjecting it to a requirement that one or more issues be “made compliant” without further specific detail as to how the issue was to be resolved. Final compliance must be monitored onsite to ensure compliance.
49	186 add that any proposal to rectify a flawed DA by demonstrating compliance with an imposed condition be subject to public notification and submission	The public should have the right to know how it is proposed to rectify flaws in a defective DA. This will serve to curb any tendency to wave a DA through once it is away from public scrutiny. Any submissions received in relation to such publicly notified rectification proposals should be considered by the TPA Executive, documented and if appropriate acted upon.
50	187 add link to review rights	Clarify that review can be sought of a decision to approve contrary to entity advice, such as the Conservator’s advice.
51	215 insert new section	Require Legislative Assembly involvement in examining and determining Territory Priority Projects.
52	Insert new section	Add review rights for knock down re-builds. If Certifiers have accurately fulfilled their professional role, this should not be an issue. The community would take greater assurance knowing that transparent, open, public review is an option.

		Certifiers and Developers would be accountable. Penalties should be considered should these mislead regulators and Canberra citizens. This would re-balance the legislation that is currently too much in favour of proponents and ignored the interests of adjacent lease holders. i.e. the pendulum in the Bill has swung too much in favour of proponents.
53	Division 7.6.3 add quality assurance	Add provision that reconsiderations must be taken into account in TPA in providing quality assurance of primary decision making.
54		Add provision that ACAT decisions must be taken into account in TPA to provide quality assurance of primary decision making.
55		Add provision – at the very least – requiring the TPA Executive to promulgate directions to staff on quality assurance.
56	Insert new section on ACAT review applying law at time of decision	When ACAT reviews a TPA decision it should be required to apply the law at the time of the decision it is reviewing.
57	Insert new section on ACAT reviewing documents available to original decision maker	When ACAT reviews a TPA decision it should be required to rely on existing documents, including plans, available to the original decision maker. ACAT should not be required to accept additional plans from the proponent to enable it to make its DA compliant in the proceedings before the tribunal. If ACAT finds the DA non-compliant the proponent can re-submit and the DA can be re-notified. It is not the role of ACAT to shepherd a DA through to compliance and it is prejudicial and detrimental to the objectors (given the time and money invested to prepare for ACAT).

For your consideration



Dr David Denham AM  
 President, Griffith Narrabundah Community Association    16 November 2022