



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
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Submission Cover Sheet

Inquiry into Planning Bill 2022

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SUBMISSION TO THE STANDING COMMITTEE ON PLANNING,
TRANSPORT AND CITY SERVICES.

ACT DRAFT PLANNING BILL

COMMENT:

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Submission to the Standing Committee on Planning Transport and City Services

The proposed new Territory Planning Bill 2022 represents a significant change from existing legislation in that it purports to simplify the planning process while making it more accessible to the public in a more and flexible way.

However, there are numerous problems in its current form relevant to the degree of transparency and flexibility it proposes through many of the published, proposed changes. Some of these are enumerated below.

Issues with Transparency

The new body will have encompassing powers over growth, change and preservation of character while integrating with other government policies. Elsewhere however, the Minister has noted that whilst consultation with other ministries may occur the Government is not obliged to change its decision. Preparatory work will be executed and the response aligned with the District Strategy. There appears to be no guarantee of community consultation as a key aspect of this preparatory process, nor who will do it or their qualifications for the task as long as it meets overarching other government policies. The potential for conflict with an affected community is clear. Take for example the stated object of the Territory Government to make more land available for housing development in a specific district. A decision is recommended by the planners' response to resume land formerly classified as bush reserve as now suitable, if not necessary to execute the priority object. No longer will the nomination of sustainability, the protection of species and biodiversity be regarded as heading a so-called hierarchy of planning values but whilst there is an obligation to consult with other legislated environmental bodies charged with protecting these there is no guarantee that those values will be respected or implemented. We can end up with a scenario of cluster housing on what is now currently part of the Aranda Bushland or that of any other suburb. Additionally, this area, like others on the current urban fringe is the clear boundary of the urban fire zone. The same priority principle could well be applied to the small local parks in the older suburbs, whose equipment has not been maintained by local government and who have not provided guarantees of future maintenance.

The planners (who?) have the right to decline applications contrary to current government policy, or more questionably where planning is underway. The government is no longer required to consider objections if it deems them contrary to its priorities. This represents the disempowerment of citizens, the antithesis of flexibility and further illustrates the problems with failing to define the meaning of “quality” and “good” planning outcomes”. These if they are to become the key “flexible” modus operandi of the planners will need clear criterion referencing spelt out in the Planning Bill itself. If the referencing of this pathway is to be the Territory Plan, then the latter needs to be published ahead of the Planning Bill in order to achieve greater transparency and consistency. The consideration of “built spaces” as a dominate priority can only mean greater urban density at the expense of amenability and character. (Gentleman Mick Explanatory Statement and Human Rights Compatibility Statement pp. 4-5).

Outcomes Focused – Issues with Clarity and Fairness

What is the meaning of “improved development outcomes” in the future context? This indicates that either the Government judges there have been unsatisfactory outcomes (not enumerated) made by the current Planning Authority who has failed to deliver its agenda or that Canberra citizens have not been served well by past decision-making (unlikely). The only way we can judge outcomes is by having them spelt out in the Territory Plan. These should have key indicators (milestone measures) and the final assessment measures to be applied publicly stated. This should involve transparent consultation embedded not only in documentation but in practice.

All statements in the Minister’s Explanatory memorandum point to the dominance of speed through reduced compliance and the minimisation of community objection as suggested by the limitation of access to ACAT (Civil and Administrative Appeals Tribunal) to third parties. Providing access to ACAT for the lodgement of objections is restricted to two months after a decision is made. Access to ACAT will be limited to some development matters (which?) especially if they are relevant to town centre matters and planners’ priorities. This is an equity issue. Also given the complexity of the Bill we can assume that legal advice will need to be sought by objecting parties in many matters. Not all applicants have access to the time, skill and finance necessary for this process, creating an uneven playing field. Furthermore, the future strategy of withholding a decision, despite the expiration of time limitations and then

announcing one at a future time is no guarantee of flexibility or transparency. Flexibility will lie with government.

Applicants may have access to advice prior to the government during consultation. This raises the inevitable question of which applicants? Is equitable access for all parties guaranteed? Equal access to the hierarchy of the planners' decision-making criteria also needs to be available for all applicants in a timely matter. Simply providing the public with public announcements of the stages of the planning process does not guarantee this. A scenario where a community not for profit organization's application in a town centre to assist community housing or services may compete with a development application of a large construction company aiming to house hundreds. This would require a moral and equity judgment not necessarily provided for in the government's aims or priorities.

Provision is made in the Bill for applicants to apply for an amendment to the Territory Plan (which has not yet been prepared or completed?) Transparency in this avenue should be available to all applicants on an equal footing. The Minister has stated that the current Territory Plan provides insufficient certainty. In future, current prohibitions will be reconsidered e.g. the removal of zoning, changes to prohibition of multi development on suburban blocks and current compliance requisites for height and setback. the removal of these facilitates government priorities but provides no guarantee of achieving other stated aims of amenability and established character for residents.

The Minister has stated that the current environmental assessment processes required by the Territory Plan are now considered to be "ineffective" for achieving outcomes. We can assume that protection of the environment may now be considered low down on the scale of planners' criteria. Whilst consultation may be legally required and undertaken, those consultative inputs can be ignored if they compete with the stated priorities of government. The Chief Planner will now have increased power and is no longer required to adhere to the advice of The Conservator. This removes limits that protected the interests and rights of those wishing to preserve the character, diversity and amenity of unsettled land.

There is potential for the entire future of the local and adjoining environment to be radically changed for increased settlement. This will levy an environmental cost and disempower the ACT applicants and objectors who wish to preserve key elements of the environment.

Issues Related to Certainty

The Planning Authority reserves the right to withhold a decision by the expired time despite an application(s) to challenge or reconsider but can still make a decision in favour of the original application at a later date. This is further complicated by the removal of concurrent consent processes which will be replaced with updated administrative practices. There is no definition of what these may be, applied by who or of their superiority to those currently in place. Not only does this challenge the common concept of certainty but raises questions of transparency.

The Bill provides for the removal of concurrent consultative processes to be replaced with “updated administrative practices”. This apparently will assist speed. Whilst the government has committed to publication of decisions, the staging of availability of comment etc. etc. the public need to know what precisely these practices will be and how they will affect consultation. Will they be applied uniformly? Significant changes to the power base of interested parties previously noted suggests that although speedy decisions may take precedence, they will not necessarily deliver better outcomes.

The Minister now can direct a planning decision to the Chief Planner, directing him/her to redirect the final decision back to him/her if they consider it inappropriate. Does this suggest that even in the final event the goals have shifted and objectors’ interest which might been taken into account will no longer be acceptable? Will this measure work either to disempower residents or recognise their interests? The diminution of the Legislature’s role now is of deep concern when this power is considered.

Some categories of decisions in the legislation also will be exempt from review so limiting the rights of objectors at the outset. This does not satisfy the Minister’s stated aims to achieve fairness but will again enhance speed. These categories need to be publicly and clearly stated in the Territory and District Plans.

The new Planning Authority will be empowered to vary land use on a short-term basis which requires definition. The Minister has provided recent examples of this which undeniably were in the Public Interest. However, there is no guarantee that these would not become permanent if the government changes its stated priorities. Once more this measure by-passes the Legislature and could assist changes to the Territory Plan by self -interested applicants.

Conclusion

While there is an expectation that the current Planning Review will lead to a simplification of processes, the current Bill is around 500 pages in length, and the Explanatory Statement exceeds 130 pages. The complexity and contradictions already noted will make it difficult for community groups and individuals to fully understand what changes are proposed to current arrangements and how these will be implemented, particularly given that some of the more detailed supporting documents are not yet available. The removal of key compliance requirements is also likely to raise concern.

While there is some merit in the general objectives of the new legislation, achievement of these desired outcomes requires a high level of trust that the planners, public servants and politicians will have the appropriate skills and resources to deliver what is proposed. Additionally, there needs to be certainty the process will address community issues and needs. Unfortunately, many recent planning and development initiatives suggest otherwise.

While local communities will support some increase in the number of dwellings in existing suburban areas, the need to preserve trees, shrubs and ground cover on public and private land to ensure effective master planning is crucial. The delivery of community facilities, transport, streetscapes and amenity and the retention of heritage character should be paramount. There is also a need to consider and assess potential impacts of new developments on neighbours' and existing facilities.

It is suggested that further consideration of the Planning Bill 2022 should be deferred pending access to more detailed supporting documents, and confirmation that resources and skilled personnel will be available to effectively implement appropriate development. There is also a need to ensure that the voluntary input of community groups and individuals is valued, and not taken for granted or ignored as part of decision-making processes that appear to enhance the powers of planners and the potential for arbitrary ministerial intervention. This will enhance trust, certainty and transparency.

