



## Standing Committee on Planning, Transport and City Services

### **Inquiry into Planning Bill 2022** **ANSWER TO QUESTION TAKEN ON NOTICE**

Asked by MS Suzanne Orr MLA on 7 December 2022: Environmental Defenders Office took on notice the following question(s):

Reference: Hansard uncorrected proof transcript 7 December 2022, page 10

In relation to: technical requirements being inserted into legislation.

**MS ORR:** Sorry, I just had a supplementary-based on the mandatory provisions of technical specifications. I just want to get a better understanding of what you are advocating for because when you say to put it back into the bill are you essentially saying that all territory code and territory specifications should now suddenly be in this bill?

Because they would not currently be instruments that might be under the bill that might be, you know, specifications that come through various things including national agreed standards. And I am not sure where you are drawing the line and it seems like that could become quite problematic and quite big if it was taken as a statement.

**Ms Montalban:** I do not think we are advocating for bringing back all the current laws into this bill. But we would be suggesting that there should be some clear, there should at least be some specific mandatory technical requirements but where they sit I do not think we can say.

**MS ORR:** Can you give me an example of what you—because, I mean, technical requirements can mean a lot of things. So, is there an example you can give just to clarify?

**Ms Bradshaw:** So, technical requirement, I think that a building must be a certain height or that a fence needs to be a certain number of metres away.

**MS ORR:** I mean, that would not necessarily be in the current builder. That would need to be in the codes for the areas and within the Territory Plan. So, I mean, I guess the bit I am trying to grapple with is it would not, like, are you saying it should now be put into the legislation because that could make it quite cumbersome and difficult to change?

And also it makes it a very one size fits all across Canberra which from a design perspective can be very difficult to reconcile if you do not take into consideration the factors of the block, so I mean I guess—you know, and that is where the balance comes from, is that it is not necessarily in the head bill but it is still supported within the codes within the Territory Plan, and I guess I am just trying to

grapple with where it is going, and where you see it is going wrong now and what the problem is that is trying to be fixed by that.

**Ms Montalban:** I probably have to think about that.

**MS ORR:** Sure. Did you want to take that on notice.

**Ms Montalban:** I will take that on notice if it.

Environmental Defender's Office: The answer to the Member's question is as follows:–

We confirm that our view is that technical specifications, such as those that are contained in zones and codes in the Territory Plan, should remain in the Territory Plan and should not be included in the Bill. We agree with Ms Orr's view that including technical specifications in the Bill would lead to the Bill becoming an excessively cumbersome piece of legislation. We also agree with Ms Orr's view that legislative provisions are more difficult to amend in comparison to subordinate legislation like the Territory Plan, and that including technical specifications in the Territory Plan also allows for greater design diversity in different areas across the ACT.

However, as we submitted in our first submission of 17 June 2022 (Attachment A of our submission to this Committee of 10 November 2022), EDO has a number of concerns about the extent to which the ACT's reformed planning system is outcomes-focussed. We submitted that if the ACT Government is to introduce an outcomes-focussed planning system, it must ensure that any outcomes-focussed provisions are appropriately balanced with mandatory provisions and technical specifications (Recommendation 2).

In our view, this would be achieved by:

- including mandatory considerations in the Bill, which are matters that must be considered by decision-makers when making key planning decisions;
- avoiding the inclusion of outcomes-focussed considerations in the Bill, as this would create high levels of subjectivity and may lead to uncertainty and lack of transparency in decision-making;
- if there are to be outcomes-focussed provisions, include these provisions in the Territory Plan, while ensuring that such provisions are appropriately balanced with technical specifications in the Territory Plan.

We understand that when the ACT Government prepared the Bill, it endeavoured to take this approach. In our submission of 17 June 2022, we encouraged the ACT Government to continue to apply this approach as it continued to implement the ACT Planning System Review and Reform Project.

Since preparing our submission, the ACT Government has released the draft Territory Plan for public consideration and comment. However, at the time of attending the hearing in this Inquiry and preparing our response to this question on notice, we have not had the opportunity to review the Territory Plan, including to determine whether outcomes-focussed provisions in the Territory Plan are appropriately balanced with technical specifications. We confirm that we intend to review the Territory Plan in early 2023 and are considering providing feedback on the Territory Plan including in relation to this issue. If we decide to provide feedback, we are happy to provide our submission to the Committee. However, please note that we will likely not be in a position to finalise any submission until the close of public consultation on 3 March 2023.

We further submit that if the ACT Government is to introduce an outcomes-focused planning system, any outcomes-focused provisions must be appropriately balanced with the mandatory provisions that EDO has recommended are included in the Bill. In particular, we refer the Committee to the recommendations in our submission of 17 June 2022 that the Bill include provisions that make it mandatory for decision-makers to:

- consider the objects of the Bill (Recommendation 5);
- achieve ecologically sustainable development (Recommendation 9);
- consider climate change (Recommendation 14);
- consider the cumulative impacts of proposed development (Recommendation 19);
- consult with representative Aboriginal organisations for key planning decisions, incorporating the principle of free, prior and informed consent (Recommendation 22); and
- refuse development applications for proposals that will have a significant adverse impact on Aboriginal cultural heritage (Recommendation 24).

Approved for circulation to the Standing Committee on Planning, Transport and City Services

Signature: 

Date: 20 December 2022

By Melanie Montalban, Managing Lawyer ACT, Environmental Defenders Office