



Submission to the ACT Legislative Assembly Standing
Committee on Planning and Environment's Inquiry into the

DRAFT PLANNING AND DEVELOPMENT BILL 2006

May 2006



ABOUT ACTCOSS

ACTCOSS acknowledges Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage traditional owners have suffered since European settlement. ACTCOSS celebrates the Ngunnawal's living culture and valuable contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a professional, cohesive and effective community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

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Submission to the ACT Legislative Assembly Standing Committee on Planning and Environment's Inquiry into the Draft Planning and Development Bill 2006

Planning for Social Equity

Planning systems and the built environment can have multiple and pervasive effects upon living conditions and social equity. Where housing is located, its quality, and the distribution of low-cost housing has substantial effects upon how people manage their financial and social circumstances. The distribution and accessibility of transport systems, employment premises, open space, social infrastructure and public amenities throughout the urban environment affects people's ability to earn income, and access educational opportunities, healthcare and social support.

It is frequently those in our society who have the least resources who bear the brunt of poor urban planning. Urban design that creates disparities in access to services, results in the exclusion of affordable housing in well-located areas, or reduced social connectedness exacerbates differences in social opportunities and obstructs efforts to reduce social inequality. People living on low incomes have the least degree of choice in housing, and are frequently forced to reside wherever housing is least expensive. Planning systems should help ensure that inexpensive housing is located near to employment and social services, and *vice versa*, to help address social disadvantage and ensure that the prosperity created by urban environments is shared between all of its residents.

The most obvious example of the failure of urban design is the creation of concentrated areas of poverty. Canberra has historically avoided this fate, but ACTCOSS is currently concerned that current trends may be pointing to a greater spatial aggregation of poverty. These include the changing location of public housing, rising disparity between house prices in central and outer Canberra, a tight private rental market, increasing disparity in transport costs and the concentration of employment opportunities in central areas. Most significantly, ACTCOSS would advocate that the planning system, in concert with other government strategies, such as the management of public housing assets, should assign a high priority to preventing any further concentration of disadvantage in particular local areas.

Thus, ACTCOSS would make the initial comment that the draft *Planning and Development Bill 2006* does not appear to address these over-arching concerns. While there are vague passing references to some social aspects of urban planning, the Bill does not place any significant importance on improving social equity as an important goal, nor upon explicitly recognising that the people of Canberra have diverse needs that require consideration by the planning process.

Planning System Reform

ACTCOSS has been involved in consultations on the Planning System Reform Project, by submitting to the initial consultations in July 2005 and by its continuing role on ACTPLA's Planning and Development Forum.

ACTCOSS raises the general concern that the Planning System Reform Project has been aimed primarily at the declared intention to make the planning system simpler, faster and more effective, but may not have paid a great deal of attention to its stated objective of "recognition of the opportunity for planning to contribute to social equity"¹. While ACTCOSS has no issue with improving the accessibility and timeliness of planning regulation, we are concerned that an opportunity has been missed to more closely entwine social equity objectives into the planning framework.

In responding to the initial directions paper produced by ACTPLA, ACTCOSS raised a number of issues², including:

- Affordable housing
- Concessional leases and direct grants
- Lease purpose clauses
- Infrastructure charges
- Zones and codes
- Master plans and neighbourhood plans
- Plan variations
- Track-based assessment
- Community consultation
- Appeals and complaints
- Impact Assessments

¹ ACTPLA (2005) Planning System Reform Project Directions Paper, p.5

² Note: The ACTCOSS Submission on the Planning System Reform Project from July 2005 is available at www.actcoss.org.au

The Draft *Planning and Development Bill 2006*

ACTCOSS notes that the draft *Planning and Development Bill 2006* (*the Bill*) is only one stage of the Planning System Reform Project, and that many of the recommendations and policies to be pursued as part of the project will be implemented through other means, particularly through changes to the Territory Plan and the associated development of zones and codes. Thus, in many respects of the proposals, it is difficult to comment on the outcomes without being able to examine the details that are still to be determined.

The Bill itself is essentially framework legislation, which outlines general approaches and powers in relation to planning and development. Many parts of the Bill are more or less reproductions of sections of the *Land (Planning and Environment) Act 1991* and the *Planning and Land Act 2002*, which are intended to be repealed. While the Committee and the community may have further opportunities to discuss the more detailed proposals when the restructured Territory Plan becomes available for inspection, it is clear that the passage of the draft *Planning and Development Bill 2006* will generally endorse the proposed direction of the Planning System Reform Project.

This submission will briefly touch upon some more general issues concerning the planning system, and will later outline some specific issues in the proposed legislation.

Affordable Housing: On a number of occasions, ACTCOSS has raised the possibility that the planning system could be more proactive in promoting the goal of affordable housing, in concert with other government agencies and strategies. It appears that this has been treated as outside the scope of the Planning System Reform Project, although ACTCOSS would maintain that an emphasis on equitable housing outcomes should be an integral part of the process.

Concessional Leases: ACTCOSS welcomes the review of concessional leases and the Government's rejection of the recommendation that concessional lease status lapse after 20 years³. ACTCOSS notes that the Bill strengthens Government oversight and control of leases granted on a concessional basis⁴, and ACTCOSS agrees that this is appropriate and assists in ensuring that concessional leases remain used for the purpose for which they were granted, or else are returned to the Territory or change in use for an equally appropriate purpose. However, we would point out that only the lessee can appeal a decision about the determination of concessional lease status (Schedule 1, Item 18, p.306), and would advocate that third parties should also have standing to appeal these decisions – given that concessional status has been granted to meet community needs.

Community Facility Zoning: ACTCOSS also welcomes the decision to retain the community facility zoning as a distinct land usage in the Territory Plan. In addition, we would encourage greater utilisation of this zone, particularly in high demand areas such as Civic and the Town Centres.

Appeals: ACTCOSS would express its unease at the reduction in appeal rights for third parties for a range of development applications. While ACTPLA is no doubt as efficient and disinterested as possible in determining development applications, given its relatively small resource base, it is by no means infallible, and there should be appropriate judicial review of its decisions.

While second parties have the option to request a reconsideration of a refusal or conditional approval, as well as full appeal rights to the AAT for a wide variety of approvals, the same rights are not afforded to third parties. The breadth of third parties with rights to appeal and the range of developments that are appellable have already shrunk in recent years, and the Bill further restricts these. Noting that appeal through the AD (JR) Act is unattainable for many in practice, particularly for low-income individuals or community organisations, the increasing restrictions on appeal rights for third parties has the potential to reduce judicial oversight of ACTPLA.

Exempt Assessment: ACTCOSS remains concerned that the expansion of activities categorised as exempt from requiring development approval may lead to a deterioration in the built form of new residential areas. The removal of requirements for development applications means that there will be far heavier reliance on building approval and private building certifiers to enforce development controls. This may be less effective at ensuring compliance.

³ ACTPLA (2006) Report on the granting and administration of concessional leases in the ACT: Government Reponse, Recommendation 6, p.3

⁴ see Part 9.4 of the Draft Bill

Legislative Issues

While there are a number of more detailed issues that may become apparent when any revised Territory Plan is presented, at this stage ACTCOSS will focus upon issues detailed in the Bill.

Object of Act: ACTCOSS notes that the main object of the Bill has remained unchanged from the *Planning and Land Act 2002*. This states that:

6 Object of Act

The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—

- (a) consistently with the social, environmental and economic aspirations of the people of the ACT; and
- (b) in accordance with sound financial principles.

ACTCOSS particularly is interested in the interpretation of the phrase: “social, environmental and economic aspirations” – a phrase that is also repeated in s97 and s99 of the Bill in relation to the planning strategy.

ACTCOSS is concerned that these concepts are too vague to give any meaningful legislative or judicial interpretation to the intent of the Bill. We would advocate that the terminology is refined to articulate what those aspirations might be, particularly as the current language may have widely divergent interpretations.

ACTCOSS recognises that ultimately, the object of an Act is of only minor importance in working out the meaning of legislation, and the more detailed prescriptions in the Bill will generally receive far greater administrative and legal scrutiny. However, particularly in light of the *Human Rights Act 2004*, the object of an Act plays a relevant role in determining the status of any legal ambiguity in legislation, and should have some reasonably objective basis through which it can be interpreted.

Sustainable development: In 1992, the Commonwealth Government, endorsed by the Council of Australian Governments, released a foundation document on sustainability: the *National Strategy for Ecologically Sustainable Development*. Its core objectives were stated to be:

- To enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations
- To provide for equity within and between generations
- To protect biological diversity and maintain essential ecological processes and life-support systems

It is interesting to compare this with the principles in the Bill (s8). While the basic concepts of environmental protection and inter-generational equity are largely the same, the idea that sustainable development incorporates the promotion of individual and community well-being and welfare is not present. Similarly, while the definition in the Bill expressly includes the principle of equity between generations, there is no reference to equity *within* generations – meaning that the principle that development should help ensure that everyone has equitable access to resources has been lost.

ACTCOSS would strongly recommend that the principles of community welfare and equity within generations be re-introduced to the definition of sustainable development.

Object of Territory Plan: At first glance, it is interesting to note that the Territory Plan (*the Plan*) has a slightly different object from the Bill as a whole (s47), and that it is not stated that the Plan must be consistent with the object of the Bill (s48). This object states that:

47 Main object of territory plan

The main object of the territory plan is to ensure that the planning and development of the ACT provides the people of the ACT with a sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.

This object is narrower than the object of the Bill, and while it may be difficult to provide a comprehensive and definitive list of adjectives for the type of environment that the community expects, none of those listed express a number of key social justice principles, for example:

- *equitable*: where people all have fair access to resources
- *accessible*: where everyone, including those with a disability, are free to move around and have equal access to the built environment
- *affordable*: where everyone has access to a basic standard of living at a modest price
- *inclusive*: where the diversity of people is recognised and are equally recognised in decision-making

Similarly, it is interesting to see the short list of activities that are attributed to people by this statement: they “live, work and have their recreation”. While the word “live” could technically encompass all aspects of life, it is interesting that aspects of life other than work and recreation are not included, for example, to interact with other people and participate in the life of the community. It is not made salient that people do not simply act individually, but live together in families and communities and make a broad variety of social connections. Consideration could be given to acknowledging that social inclusion and connectedness are appropriate goals for urban design.

Discretion to withhold information: Section 64(2) appears to give a very wide discretion to ACTPLA to withhold background information that accompanies a draft variation to the Territory Plan. While it is acknowledged that there may be a variety of circumstances where such action would be appropriate, it seems prudent to at least give some indication of the grounds on which this action may be taken, such as privacy or public security, rather than a broad discretion.

Committee oversight: ACTCOSS remains concerned at the reduction in legislative oversight of the Territory Plan variation process as outlined in Division 5.3.5. While ACTPLA generally conducts useful and open consultation processes, legislative oversight by the Committee remains an important element of scrutiny of the planning system, and often assists in addressing issues that had otherwise not been considered or received inadequate attention. While it might be useful for there to be some process by which the Committee stage might be bypassed for non-controversial changes, leaving this decision solely in the hands of an Executive officer seems open to misapplication.

In particular, ACTCOSS notes that the Bill proposes to give the Minister discretion over whether a draft variation will be considered by the Committee, which appears to blur the distinction between legislative and executive roles. It seems difficult to recommend a system of oversight that allows the object of scrutiny to determine the matters of inquiry.

While ACTCOSS notes that section 70(3) clarifies that the Committee may inquire into a draft plan variation on its own initiative or by a reference from the Assembly, we also observe that section 71 does not appear to operate under these circumstances. In other words, if the Minister decided not to refer a variation to the Committee, and the Assembly subsequently did so, the Minister appears to be able to approve the variation without waiting for the Committee's report, or taking the Committee's recommendations into account.

Technical variations: ACTCOSS notes that, at times, the Territory Plan variation process has been a cumbersome instrument to correct what have been considered very minor changes to the Plan. However, while it seems appropriate to include a new mechanism to achieve this (Part 5.4), there seems little explanation as to why the instrument should not be disallowable.

Content of SEAs and EISs: ACTCOSS observes that the content of Strategic Environmental Assessments (SEAs) is to be prescribed by regulation (s93) and that the content of Environmental Impact Statements (EISs) is to be determined by the Authority. ACTCOSS would comment that environmental reports tend to focus upon the environmental aspects of development – even by their title – and frequently give insufficient attention to social impacts. While we acknowledge that social impacts are addressed, they are often confined to relatively narrow terms such as health, safety and heritage status. Broad social issues such as affordability, equity, or inclusion tend not to be mentioned. ACTCOSS would hope that there is broad consultation on prescribed content, and that ACTPLA is able to consider these issues as a matter of course.



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Land Authority's**

Planning System Reform Project



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About ACTCOSS

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Introduction: Social Equity and the Planning System

ACTCOSS believes that a fair and equitable planning system is an essential element in reducing disadvantage and creating a respectful, diverse and cohesive community. Social scientists, policy makers, and advocates of progressive social policy, such as ACTCOSS, are becoming increasingly interested in the spatial elements of disadvantage, and the social equity issues raised by the form of the built environment.

The Directions Paper mentions this in passing: specifically, it states that the planning system should enable the objective of “recognition of the opportunity for planning to contribute to social equity” (p.5). ACTCOSS is disappointed that this objective is not more actively pursued in the reform process. Social equity should not simply be a “recognised opportunity”, but a central goal to be actively achieved by the planning process.

The goal of social equity is not further developed in the planning reforms. There is no information that further extends what this opportunity might be or what systems and methods might be used to achieve it. ACTCOSS would encourage the Authority to further explore, define and implement this objective in this and future planning processes.

Affordable Housing

Central to any consideration of social equity should be the provision of low-cost housing in the ACT. There is no mention of the provision of affordable housing stock as an objective of the planning process. In contrast, the Directions Paper gives the objective of pursuing “an effectively functioning property market with clear rules to support economic opportunities and development”. Yet, there is no indication of what ACTPLA considers to be “effective”, nor for exactly whom is to be the recipient of these “economic opportunities”.

ACTCOSS considers an “effective” property market to be one that caters for Canberrans of all income-types, including those on low incomes or reliant on social benefit payments. ACTCOSS would hope that the planning system would seek to provide “economic opportunities” for people experiencing disadvantage, as well as to assist and encourage social cohesion and mobility. ACTCOSS would encourage the Authority to incorporate more specific mention of the groups it seeks to assist in developing planning policies. In particular, the Authority should explore, promote and implement appropriate planning systems to encourage and increase investment in affordable housing.

ACTCOSS also notes that planning documents, such as the City West Master Plan, are increasingly referring to the provision of affordable housing. However, there is no accepted definition in any planning instruments about what exactly is meant by the term. This makes any reference to affordable housing unclear, and the worthy intentions of providing affordable housing can quickly become circumvented if the term is simply a catch-phrase, rather than having a distinct and accountable meaning in the planning rules.

Direct Grant of Lease

ACTCOSS supports the retention of the system of leasehold land in the ACT, which we understand is not the province of the ACT Legislature to amend in any case.

ACTCOSS has a particular interest in the continuation of the availability of direct grant leases. It is appropriate that the criteria for eligibility and price discounts be publicly available, with any review to focus on the social need for community facilities, and the appropriate organisations to which these would be granted. In particular, ACTCOSS supports the suggestion some community service providers “are not-for-profit organisations that are supported by subsidies and it may be appropriate for a charging scale to take these factors into account” [Technical Paper 1 (TP1), p.15]. However, any review of the criteria for eligibility should be subject to extensive consultation, including with community organisations.

ACTCOSS supports the continuing practice of including definitive descriptions of the intended purpose of concessional leases, and would not support broadening lease purpose clauses to allow alternative uses, particularly if this could jeopardise the provision of the primary intended use of the lease.

In particular, the Authority should be extremely cautious in proposing that concessional leases are granted to for-profit organisations, as well ensuring that the leases have the capability of being resumed or otherwise returned to the Territory if the desired use is no longer available, or alternatively transferred to an appropriate substitute organisation that is capable of fulfilling community needs for that site. For instance, organisations that no longer require community leases should not be enabled to offer them for sale at a profit, and the Authority should only allow the transfer of a concessional lease if it has determined that it will continue to fulfil a worthy community need.

ACTCOSS has some concerns about the proposal to consolidate the granting process for concessional leases to ACTPLA alone. While there may be important benefits to this, including ensuring some clarity and transparency in the lease granting process, there is also concern that the Authority may not have the appropriate knowledge in determining the most suitable candidate to which to offer community facility land, and this expertise may reside in other agencies. If the provision for granting direct leases is centralised within ACTPLA, the Authority needs to ensure that it undertakes appropriate consultation with the other agencies, including both government and non-government organisations.

Broader Lease Purpose Clauses

ACTCOSS raises some concerns with the proposal “that leases first granted through processes other than direct or restricted grants processes include a larger range of permitted uses, in circumstances where market forces should be a key factor in determining the mix of uses with a multi-use lease.” (TP1, p.10). However, it is not clear when exactly this situation is. ACTCOSS would submit that market forces have been extremely unhelpful in achieving the goal of affordable housing, and further reliance on this mechanism places future housing affordability in doubt.

Similarly, the first Technical paper recommends “that where a new lease provides for a range of uses and has been granted at full market value, there should be a single expression of the overall permitted intensity of development (such as gross floor area) in the lease”. This may cause a problem where, for example, a lease or zoning permits the construction of mixed usage developments, such as residential and commercial. It could reasonably be argued that the ground floor should have commercial development to maintain the commercial character of the area. Allowing residential-only buildings in the middle of a commercial area may tend to break up the character of the business district. Specifying additional development controls in the lease may be of use in this (and other) circumstances.

Equally, there is a cogent argument about the location of residential facilities in close proximity to commercial areas in mixed-use developments, particularly in relation to noise complaints. For example, recent media attention has been given to the tensions between a Civic nightclub and nearby residential apartments. It is constructive to note that this co-location may lead to an erosion of the ability of young people to have reasonable access to public space and cultural venues, and that additional consideration should be given to such developments in future.

ACTCOSS continues to have reservations about broadening the scope of lease purpose clauses without individual regard to location and usage.

Infrastructure charges

ACTCOSS supports the recommendation to “conduct a detailed investigation of the options for infrastructure charging”. ACTCOSS would posit that the current change-of-use charge is not returning adequate revenue to the Territory to pay for necessary urban alterations accompanying private developments, let alone to provide for the broader social infrastructure and services that are required to maintain the value of these investments. ACTCOSS would encourage the Authority to take a broad view of the social and environmental costs that born as a result of development, with a view to ensuring that these are compensated appropriately.

Territory Plan Zones (Land Use Policies)

Technical Paper 2 (TP2) suggests a consolidation of the number of primary zones in the Territory Plan. The Paper suggests that the current sixteen land use policy areas be condensed down to a smaller number of broader land use policies, such as the six primary zones in the NSW model, which could be further subdivided into various “precinct” zonings. ACTCOSS raises the concern that this model may amalgamate “community facility” zoning with a number of other zones, such as “municipal services”. ACTCOSS would strongly oppose such a change.

This type of alteration may, over time, significantly alter the usage patterns of community facility land. In particular, ACTCOSS is concerned that well-located community facility land may slowly be converted to other purposes, with the result that community organisations are faced with the prospect of gradually being relocated to more remote locations, or alternatively, being forced to pay higher rental premiums in order to access well-located community space in some other zoning (e.g. commercial). ACTCOSS is already extremely concerned at the reduced amenity and footprint of community facilities in Civic, both in vicinity of section 84 and in City West. Amalgamating community facilities zones into a broader use zoning would further compromise access to low-cost, well-located premises.

Planning Rules and Codes

ACTCOSS is concerned by proposals to limit the amount of planning rules retained in the Territory Plan, and transfer a large portion of these rules into codes and guidelines.

TP2 suggests that the status of rules could be retained by transferring them to the relevant residential code “provided it was clearly labelled as a mandatory rule rather than a performance measure ... [however,] if this were to be altered to a matter for careful consideration only (as for a planning guideline) its mandatory status could be quickly altered” (TP2, p.37). ACTCOSS would add a greater concern that taking mandatory controls out of the Territory Plan removes community scrutiny and legislative oversight from the planning process.

Currently, proposals to change mandatory protections in the Territory Plan must go through the Draft Variation Process, with its subsequent levels of community consultation. In addition, it remains a disallowable instrument and can be disallowed by the Legislative Assembly. Planning codes, guidelines and master plans have no such status, and could be quickly altered or undermined without this protection. Changes to mandatory criteria should continue to be debated widely and the elected representatives of the community in the Legislative Assembly should remain the final arbiters of whether the change is in the best interests of the community.

Master Plans and Neighbourhood Plans

ACTCOSS raises similar concerns about the proposal that Master Plans and Neighbourhood Plans “cease to be matters for consideration in development assessment” (TP2, pp.32-33). While it is understood that the complexity of the various planning instruments is of concern, attention needs to be given to the affect this may have on participation in developing such plans in the first instance. Removing any direct effect of the plans will produce greater uncertainty about whether they will make the final “leap” into the development approval process. If the outcomes of these planning processes do not make this transition, then communities may lose confidence in ACTPLA consultation processes.

The Plan Variation Process

TP2 proposes that the process of referring draft variations to an Assembly Committee be altered to “allow the Minister for Planning to decide whether a draft Territory Plan variation is to be referred to the relevant committee, with a further provision that the Legislative Assembly will have the power to direct such referral, subject to disallowance” (TP2, p.38). ACTCOSS opposes this proposal.

The proposal misunderstands the separation of powers between the Legislature and the Executive under the principles of the Westminster system, as well as the operation of oversight systems. Assembly Committees are subordinate to the Legislature, not the Executive. It is inappropriate for a member of the Executive to be determining the content of Committee deliberations, as this would mean that the Committee begins to become subordinate to the determinations of the Executive. Furthermore, the whole purpose of referral to an Assembly Committee is for the purpose of additional oversight over the decisions of Government. This oversight function is severely compromised, if not entirely corrupted, if the oversight agency can effectively be prevented from inquiring into potentially controversial changes.

That is not to say that there should be no provision for non-controversial changes to bypass the Committee. However, as the Committee is an organ of the Legislature, only the Legislative Assembly or the Committee itself should be empowered to determine whether this should occur.

ACTCOSS is disturbed by this proposal for the further reason that it could set a precedent for other referrals to Committees. If the Executive can determine which Draft Variations should be considered by an Assembly Committee, then why should it not make the same decision about which Bills should be examined by the Scrutiny of Bills Committee, which Auditor-General's Reports should be considered by the Public Accounts Committee, or which Annual Reports should be investigated.

Adopting track-based assessment

Technical Paper 3 (TP3) proposes to "remove the requirement for new single residences in greenfield sites ... to obtain development approval" (TP3, p.10) ACTCOSS queries this proposal. Despite the suggestion that "the approval process does not alter the proposed design" (ibid.), this is not to say that the level of code compliance may result from the fact that *there is an approval process*. The approval process in itself is a guide to prospective builders, particularly owner-builders, indicating that they need attend to the correct procedures in designing and building their homes. Removing this prompt to ensure building design is compliant may produce less satisfying results.

The Paper proposes that instead of an approval process, building certifiers will be asked to make a judgement about whether "the proposals were inconsistent with relevant criteria or not within the class of exempt matters". However, it is unclear whether the fact that builder certifiers are private businesses will affect their ability to give a "frank and fearless" assessment of code compliance. A certifier that was too concerned about the level of consistency with the relevant codes may soon find that their offers of work begin to decline. Alternatively, some less than scrupulous certifiers may turn a blind eye to good customers, trying their luck against the compliance regime.

Of course, ultimately a poor certifier could be prosecuted – if the Authority discovered the “error”. Even if this is the case, the Authority may not discover the mistake until the dwelling had already been constructed. This would mean that not only would the Authority have to go to the expense of prosecuting the building certifier, but the owner would also have to sue the certifier for damages, particularly if a dwelling was constructed that then had to be demolished because it did not fit the code. This becomes of even more concern if the property had been purchased by another owner since construction, or is subsequently leased for rent. Furthermore, when these faults are not discovered, ACTCOSS is particularly concerned that poorly built houses may end up being purchased or leased by low-income earners, who end up living in accommodation that exposes them to unacceptable risk.

Community Consultation on Planning Policy

TP3 states that “an over-reliance on community input ... during the determination of development applications can lead to unnecessary delay in assessments and inconsistent outcomes that detract from community agreed rules.” However, it also needs to be taken into considerations that quite frequently development applications are introduced that are of a scope that was not necessarily indicated by the previous consultations.

ACTCOSS would advise that non-statutory consultation methods need to be revitalised. Previous systems for community input are no longer operating – such as Local Area Planning Advisory Committees.

As a suggestion, perhaps there is scope an existing or new non-government organisation that could provide people with independent advice about planning concerns as distinct from the Authority, and have the ability to conduct community consultations on planning matters. Perhaps consultations conducted by an outside organisation might be able to facilitate community participation that may be more forthcoming than by Authority-initiated consultations.

Third Party Appeals

ACTCOSS is concerned at the removal of some third party appeal rights and notifications proposed in the paper. Appeal mechanisms both ensure that residents are able to access appropriate review of decisions, as well as ensure that the Authority is appropriately considering relevant rules and procedures. While appeals may be occasionally be considered a “nuisance” by some proponents, Technical Paper 3 points out that they constitute a tiny fraction of Development Applications – the “problem” with appeal mechanisms seems to have been vastly overstated in terms of their disruption to the planning system overall.

In particular, ACTCOSS supports and encourages the proposition that “community organisations whose objects of association cover issues relevant to the local area should continue to have standing to appeal” (TP3, p.38).

Compliance and Complaints-handling

Sometimes compliance problems and complaints can be the results of neighbourhood disputes. ACTCOSS is concerned that compliance complaints could, on occasion, be used as a harassment technique, for example, to try to an unwanted neighbour to leave an area. This is particularly of concern if the reasoning is one of racial disharmony, sexuality, or that the lessee is unable to maintain their property due to financial stress. It is not appropriate that the compliance complaints system, and ACTPLA, to be used in what is effectively a form of discrimination.

While there is the potential for ACTPLA to dismiss complaints as being vexatious or frivolous, this does not really address the problems being raised. As well as maintaining a risk management assessment, there is scope for ACTPLA to act as a referral agency or seek to involve appropriate conflict resolution services to try to assist in resolving the dispute.

Environmental Impact Assessment

ACTCOSS notes with concern proposals to reduce the use of environmental impacts statements in the planning system.

In addition, while environment impact assessments generally include some social parameters, there is scope to increase the detail of the social impact of development on the community. This could include, for example, the extent to which the development provides for a variety of income types and affordable housing, the impact upon the use of public space, and surrounding buildings, particularly the impact on nearby community and government buildings and activities, as well as those of the private sector.

Some recent changes to the planning system, including the creation of East O'Malley Estate and the recent changes to the Stromlo settlement, are examples of how the planning system has failed to adequately consider the impacts on social diversity. “East O'Malley Woodland” is now being marketed as “desperately desirable” – implicitly making the far from subtle suggestion that the estate is “exclusive” and will be located well away from moderate income earners, let alone marginalised Canberrans. These current examples indicate that the ACT may be experiencing increasing spatial segregation of disadvantage, and only significant consideration, planning and investment will be able to reverse this unsettling trend.