

Your local voice



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The Committee Secretary,
Standing Committee on Planning, Environment and
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**Weston Creek Community Council Submission on the Planning and
Development (Project Facilitation) Amendment Bill 2014**

The Weston Creek Community Council (WCCC) does not support the ACT Government's Planning and Development (Project Facilitation) Amendment Bill 2014 in its current form.

1. Concerns

The Project Facilitation Bill is concerning on several levels. Most importantly, it concentrates power in the Minister and the Legislative Assembly and overrides due process in removing the right of appeal. This leaves the legislation open to significant abuse down the track. WCCC considers that the legislation does not have sufficient checks and balances in place to prevent future malfeasance. The Bill also limits public consultation, particularly when a draft Territory Plan Variation is lodged at the same time as a Development Application, as this is a much more complex issue for the community to understand.

Council is also concerned that this Bill could allow for large scale Territory Plan Variations that will effectively by-pass the current layered process of consultation. Another concern WCCC has is that the legislation is designed to override a number of important laws and regulations, including Heritage Protection and Tree Protection. Council shares the views expressed publicly by the ACT National Trust, the Australian Institute of Architects, the Conservation Council and the Heritage Council. These laws and regulations are in place for a reason as they providing important safeguards to the community when development is proposed.

2. Separation of Powers

The ideal situation in any community should be the separation of planning and politics. The Project Facilitation Bill heads in the opposite direction and concentrates power in the Legislative Assembly. There is no doubt that voting on projects will be on party lines – any party with majority support will always carry the day and get its favoured project through, no matter how controversial or inappropriate it may be.

In the future, governments may be less scrupulous – we cannot predict what the make-up of any new Government may be. This Bill leaves open the considerable potential for corruption. The NSW experience with ICAC, as well as the questionable practices of Wollongong and other NSW Councils, demonstrate what can go wrong when politicians get too close to developer interests without the proper check and balances being in place.

3. No need for the Bill

The ACT President of the Planning Institute of Australia, Mr Viv Strav, recently has said that the Project Facilitation Bill is not necessary. He questioned placing restrictions on public consultation for the sake of economic development, and warned against moving planning approvals from the “technical” arena into the political arena. According to Mr Strav, separation of the planning powers and approvals from the development processes was a fundamental tenet of checks and balances, avoiding conflicts of interest between developers and politicians.

Mr Strav also noted there was little evidence that planning systems slowed down projects, and pointed instead to poor planning, lack of proper environmental assessment and unreliable agency advice. Council shares Mr Strav’s view.

4. Decision Makers with no Experience in Planning

The Project Facilitation Bill effectively moves urban planning decisions to politicians with no experience in urban planning. This is a complex area. Individual MLAs may make decisions on economic or party lines, rather than on the basis of good planning practice. This could lead to personal or party-political bias irreversibly and negatively altering the urban fabric of Canberra, and also impacting on future planning directions.

In his speech in the Assembly, Mr Rattenbury stated ***‘we need to be careful to use this power wisely and judiciously’***. While this is an important point, history has shown that not all political representatives are judicious and wise all of the time. They are not beyond making mistakes and being open to influence. When it comes to large developments, the stakes can be high, and the results irreversible.

5. Vague legislation with Poor Definitions

Another very concerning element of the Project Facilitation Bill that leaves it open to future abuse is that the legislation is very vague and includes poor definitions. For instance, the specification that for fast tracking to occur projects must ‘*meet the criteria of both substantial public benefit and also be of major significance to the Territory.*’ What exactly constitutes a project of “**substantial public benefit**” or “**of major significance**” is anyone’s guess.

In theory, this could be extended to anything that a Minister or their party want to see built! Even a petrol station or a single apartment building or any other development, no matter how small, could be judged by the Government of the day as of “**substantial public benefit**” and given the green light for fast tracking. Thus it would over ride due process and community concern. Council sees this as a dangerous path to proceed down.

6. Call-in Powers and the Project Facilitation Bill

The Government has argued that the Project Facilitation Bill is necessary because it is better than call-in powers.

- Firstly, this is somewhat disingenuous. It’s like comparing two “*totalitarian*” regimes – both are fundamentally bad, and run counter to responsible governance. We should avoid both solutions.
- Secondly, WCCC understands this Bill won’t replace call-in powers as these powers will still be available to the Minister of the day.
- Thirdly, the Explanatory Memorandum to the Bill notes two areas where the Bill is actually more draconian than call-in powers:
 - (a) it removes rights of review under the ADJR Act; and
 - (b) time limits Supreme Court review under the common law (page 22).

Call- in powers do not include either feature.

- Fourthly, the Government has already indicated that it sees Project Facilitation legislation as less controversial than call-in powers. Because of this, Council considers that the Government will likely use the new powers much more frequently than call-in powers. The call-in powers have been used relatively rarely due to their controversial nature. In the future, WCCC sees the possibility, even probability, that a large proportion of all developments may be fast-tracked.
- Finally, WCCC considers that there are really no limits on what the Legislative Assembly can use its Project Facilitation powers for so long as the majority of MLAs are onside.

7. Lack of an Appeal Process

The Explanatory Statement states that ‘the restriction of third party appeals to the ACAT and review by the Supreme Court arguably engages sections 17

(Taking part in public life) and s21 (Fair trial) of the Human Rights Act' (page 21). The statement goes on to argue that the right to take part in public life is addressed by extensive opportunities for public comment, and the fact that 'the declaration will also be subject to scrutiny and debate by the Canberra community's democratically elected representatives in the Legislative Assembly'. It is the Council's view that these are not sufficient safeguards, especially when opportunities for public feedback and consultation under the Bill are so limited.

Further work on the legislation should be undertaken, including legal opinion by independent lawyers and, if relevant, a statement or submission from the Human Rights Commissioner to satisfy the community that Human Rights are not being infringed.

8. De-couple the Symonston Mental Health Facility from the Bill

It is noted that the Bill contains specific clauses to put into effect the Symonston Mental Health Facility as a special precinct. This issue should be dealt with in isolation, allowing the remainder of the Bill to be reconsidered. This would remove some of the urgency with the legislation, and allow for greater public scrutiny. WCCC is concerned that the Government is using the need for the Symonston Mental Health Facility as a lever to push through the legislation – a poor excuse for putting in place badly thought out policy. The two issues – the mental health facility and the Project Facilitation Bill should be decoupled.

9. The Sheer Haste of “consultation”

WCCC is concerned that this legislation is being pushed through at great speed with, at least initially, very little stakeholder consultation accompanied by an attitude of basically “Trust us, we’re the Government, we know what’s best”. This approach does not bode well for the application of this Bill if it is passed.

The Bill was introduced to the Assembly on 20 March 2014, the last day of the March sittings and the Government attempted to secure its passage on 8 April 2014, the first day of the April sittings.

Then the Bill was referred to the Standing Committee on Planning, Territory and Municipal Services. However, the timetable allowed for this process is also far too short as only two weeks were allowed for the lodgement of submissions on what is a very complex and significant measure.

We see that only one day has been allocated for a public hearing and that is 24 April just two days after Submissions close while the Committee’s report is due by 6 May, the first day of the May sittings.

There has been no explanation for the rush to pass this legislation effectively without any consultation , or as we now see, as little consultation as possible.

This Bill is seen by WCCC as an almost total change to the planning system. WCCC asks will projects be pushed through with similar haste and cavalier attitude to consultation?

We have all seen what can happen when legislation is cobbled together in haste without broad and considered consultation with the current inquiry into the Commonwealth Home Insulation Package. Let us hope that this is not the case with this legislation.

If you require further information on the Council's position, please do not hesitate to contact me. Council would be happy to appear as a witness in the Committee's inquiry into the Project Facilitation Bill to further expand on our position.

Tom Anderson
Chair
Weston Creek Community Council

22 April 2014

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