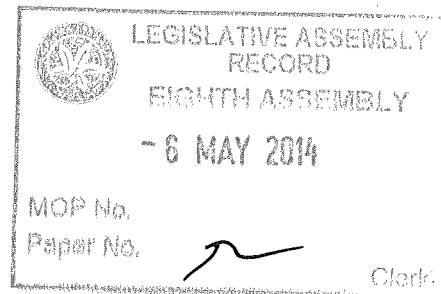


ACT Legislative Assembly

**STANDING COMMITTEE ON PLANNING, ENVIRONMENT AND
TERRITORY AND MUNICIPAL SERVICES**



**Report: Inquiry into the Planning and
Development (Project Facilitation)
Amendment Bill 2014**

May 2014

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Introduction

Conduct of the Inquiry

1. The Planning and Development (Project Facilitation) Amendment Bill 2014 was presented to the Legislative Assembly on Thursday 20 March 2014 by Mr Corbell MLA, Minister for the Environment and Sustainable Development.
2. On Tuesday 8 April 2014, the Assembly referred the Planning and Development (Project Facilitation) Amendment Bill 2014 to the Standing Committee on Planning, Environment and Territory and Municipal Services for inquiry and report by 6 May 2014.
3. The Committee invited submissions from a range of stakeholders. The inquiry was advertised on the Committee website. Submissions to the inquiry closed on Tuesday 22 April 2014.
4. The Committee received 25 submissions which are listed at Appendix A and published on the inquiry website at the following location:
http://www.parliament.act.gov.au/in-committees/standing_committees/Planning,-Environment-and-Territory-and-Municipal-Services/planning-and-development-project-facilitation-amendment-bill-2014
5. On 14 April 2014 the Committee heard evidence from Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development and directorate officials.
6. On 24 April 2014 the Committee heard evidence from individuals, community groups and other organisations. A list of witnesses is provided at Appendix B.
7. Transcripts of proceedings are available on the inquiry website at the following location: http://www.parliament.act.gov.au/in-committees/standing_committees/Planning,-Environment-and-Territory-and-Municipal-Services/planning-and-development-project-facilitation-amendment-bill-2014

Acknowledgement

8. The Committee expresses its thanks for the contributions made by submissions and witnesses who participated in public hearings.
9. The Committee would also like to thank staff from the Legislative Assembly Library for their assistance with this inquiry.

Notes on references

10. References in this report to the Hansard transcripts for public hearings are to the Proof Hansard.

Scope of the Report

11. The Committee regrets that due to the short timeframe for its inquiry, it has been unable to undertake comprehensive analysis of the Planning and Development (Project Facilitation) Amendment Bill. This Report is focused on the major issues brought to the Committee's attention in submissions and public hearings.
12. The Report is structured as follows:
 - Chapter 1—Introduction—which provides background information about the establishment and conduct of the inquiry as well as an overview of the Bill and comments from the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role);
 - Chapter 2—Commentary—provides a summary of the evidence received on the four major sections of the Bill and the Committee's response to this evidence;
 - Chapter 3—Recommendations—provides the Committee's recommendations

Overview of the Bill

13. The Planning and Development (Project Facilitation) Amendment Bill 2014 proposes changes to the Planning and Development Act 2007 in four broad areas:
 - a. allow the Territory Executive to vary the Territory Plan through a special precinct area variation;
 - b. allow the Territory Executive to make a declaration of a project of major significance by disallowable instrument
 - c. allow a development proponent to lodge a development application that applies a draft Territory Plan Variation
 - d. in the impact track, allow simultaneous development application notification and public consultation on the attached Environmental Impact Statement (EIS)

Consideration by Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

14. In accordance with its resolution of appointment, the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) examined the Project Facilitation Bill and made comments in Scrutiny Report 16.
15. In its report, the Scrutiny Committee wished to draw a number of matters to the attention of the Assembly including:
 - a. access to justice concerns in relation to unavailability of judicial review in respect of a special precinct variation, development approvals within a special precinct area, as well as a declaration of a project of major significance;
 - i. clause 54 of the Bill proposes to add three classes of administrative decisions that are to be excluded from review under the Planning and Development Act 2007;
 - b. restriction declarations in special precincts.
16. The Committee notes that the Government provided a response to the Scrutiny Committee which is included in Scrutiny Report 17.

Recommendations

1. **The Committee recommends that the Bill be rejected.**
2. **The Committee recommends that an independent comprehensive and holistic review of the ACT planning system be undertaken.**

Commentary

17. This Chapter highlights the key views expressed by witnesses and submitters to the Inquiry.

18. No witnesses expressed a view that the Bill should be passed in its current form and the vast majority, if not all, advised the Committee of their concerns. The ACT Chapter of the Australian Institute of Architects stated:

You will also be aware that many in the community share our concern about the scope of the proposed changes and their potential consequences.

19. Ms Caroline Le Couteur said in her submission the following:

The new Bill will clearly make planning more political as the planning for possible large, and certainly important, areas of the territory can be basically determined politically. If the government has a majority in the Assembly then using the 'major project' or 'special precinct' powers will mean that it can operate the planning system without significant public consultation, [if it] so chooses.

20. Ms Margaret Fanning's view which was presented to the Committee in a submission was shared by other witnesses who presented at the public hearing.

It is simply not clear why this sort of change is either necessary or desirable. In particular it is not clear why the designation of a special precinct with development rules appropriate to that precinct could not be achieved by the normal draft variation process or project specific legislation.

...

In summary, there is virtually nothing in the Bill as presently drafted which should be supported. The Committee should recommend that the Bill be withdrawn, noting that there are well established avenues for making special provisions for the sorts of high priority projects that the Government appears to have in mind – ie by the normal draft variation process or by project specific legislation.

21. The Planning Institute advised the following:

What we do not agree on—I will get to these things a little bit more—overall is that basically this is the instrument to do that. We believe that other processes would be more appropriate. We agree that there needs to be more certainty in the post-strategic planning process but that the opportunity for consultation and for strategic thinking should happen up-front, that consultation should happen up-front much more than it does and that as people get to the finer points of planning, there needs to be

increased certainty over the planning process. We agree that that is probably an objective of this bill but we do not believe that it has been achieved.

22. The Institute went on to provided a colourful analogy relevant to their assessment of the Bill:

We think it is a bit like the tax system. Under the tax system, tax avoidance is legal but tax evasion is illegal. If you want to draw a simile, we think that this is moving from the avoidance process into an evasion process. We are very concerned about that.

...

It is too easy to look at the DA system and say, "Well, 20 days here and 30 days there and we will get an approval." That is naive, and unfortunately this act in many ways responds to and rewards that naivety. We do not think that is appropriate.

23. The Inner South Community Council gave their view of the entirety of the Bill.

Mr Edquist: But that is the usual way these things are done. We are proposing to step out into the unknown and pass some sort of global all-encompassing bill that will enable governments to handle any kind of project that comes up without passing an enabling act. You could say that each enabling act is different and that this will be more uniform. Perhaps, but I think you are going to have to give away more than you gain by having an act that will be an act for all seasons.

Committee Comments

24. The Committee notes that the overwhelming majority of witnesses and submitters raised significant concerns with the Bill as a whole.

Consultation

25. All witnesses who presented at the public hearing commented on that lack of consultation the Government undertook with relevant stakeholders. In fact, no witness indicated that they had any awareness of the Bill prior to its introduction on 20 March.
26. Ms Caroline Le Couteur's submission commented on the Government's consultation on this Bill:

I do not think there has been sufficient public consultation on this bill... It is unfortunate as in the public mind it could well be taken as indicating how much attention (none on the original timetable) the government

intends to pay to any public consultation about planning issues that are determined under the provisions of the bill.

27. The President of the ACT Chapter of the Australian Institute of Architects was concerned with the limited consultation, especially the Committee's short time to deliberate. Mr Andrew Wilson included in the Chapter's written submission the following:

Taking account of the Easter and ANZAC Day public holidays there are only 11 working days between today and 6 May. In addition, the ACT School holidays occur during this period (from Saturday 12 to Sunday 27 April) adding to the many Canberra residents who will be out of town.

For public input to be sought, the Committee must call for submissions, hear and consider evidence, and prepare its report all in a period of 11 working days. Given the importance of this matter, and the magnitude and complexity of the draft legislation (the Bill itself is 64 pages long, and the Explanatory Memorandum a further 52 pages), this timeframe appears to be grossly inadequate.

A failure by the Committee to allow appropriate time for the preparation of submissions from interested parties makes the whole purpose of referring the matter to the Committee ingenuous and, engaging in public consultation impossible.

28. Regarding the communication with the Planning Institute, the following exchange occurred:

MR COE: Has the Planning Institute been contacted by the government about this bill?

Mr Sinclair: Yes, after it was released. Again, our concern here is that what we consider to be a significant piece of legislation was not communicated and was not consulted on. As a peak body with an interest in planning we would have hoped that someone might have thought that perhaps we should be consulted.

MR COE: The bill was tabled, I think, on 20 March, and so the Planning Institute was contacted after that?

Mr Sinclair: Yes, in April, and after we had been approached by the media in regards to commenting on the bill.

MR COE: So the media got to you before the government in effect?

Mr Sinclair: Yes, they did.

29. A witness appearing in a private capacity said the following:

Dr Kwiatkowski: Lastly, I just want to add that I am very disappointed at the lack of consultation around this bill. It is good that now there is a process in place, but originally the government did not let the community and stakeholders know this was happening until the very last minute. This is important legislation and I think it should be looked at very carefully before it is voted on.

30. The Government's heritage advisory arm advised the committee the following:

MR COE: Mr Marshall, Alistair Coe here. I have a question about when the Heritage Council was informed of this bill. It was tabled, I think, on 20 March. Has the Heritage Council formally been advised of this bill?

Mr Marshall: Certainly through the directorate, council was informed. I do not have that paperwork with me but my recollection is that around the time the bill was being brought forward to the Assembly, the council was notified that the bill was coming forward. That started off a series of consultations and deliberations about the bill.

31. The Weston Creek Community Council commented on the 'obscene haste' by which the Government brought the Bill for discussion.

Mr Anderson: Thank you, Mr Chairman. Thank you for the opportunity to come along. I am not a planning expert, but I have concerns that relate to process in all of this. I would say that the bill has been brought in with what I would term almost obscene haste. There has been no effective consultation on it. I think this hearing has been an afterthought after public criticism was raised by the community through a number of associations.

One of the normal meetings we go to with ACTPLA is the planning and development forum. We were given less than 24 hours' notice that we would be discussing this at a meeting. I think the email arrived at 5.18 pm and it was for discussion at 4.30 pm the next day. Included in that email were 58 pages of a bill and 68 pages of explanatory memoranda. That is what I mean when I talk about obscene haste.

32. Residents of community groups said the following:

Mr Edquist: If it was the executive's intention to make things difficult, they have succeeded at least in part. But I would note that community consultation where the community does not get the opportunity to express its views is not really consultation. I think it is a pity in a way, because I do not think it enhances the dignity of the Assembly that the executive is using it in this way. It is not really appropriate.

We appreciate the political constraints, but I think it would be better for everyone concerned if the consultation period could be extended in some way so that real consultation could take place.

MR COE: So the bill was presented to the Assembly first on 20 March and then it was to be voted upon in three weeks after that. Prior to the bill being presented to the Assembly on 20 March, the council had not been asked to provide comment?

Ms Forrest: We knew nothing about it.

Ms Price: I can say there was definitely nothing before 20 March.

33. The National Trust of Australia (ACT) was also unimpressed with the consultation.

Mr Martin: The time frame for review of this act is something which concerns us greatly.

34. Ms Margaret Fanning advised the Committee in her submission that more consultation is required.

The Bill is proposing changes of a radical nature to our planning system and processes. The Bill itself is lengthy and complex, as is the associated documentation. There appears to have been no public consultation on the proposals and the time now being allowed for public comment on the Bill is ridiculously short. It is clear from comment in the media that many share the view that more time is needed for consideration of the Bill's provisions, especially given the importance of the issues involved. There is no possible justification for rushing the Bill through in the way that it is currently being handled.

Committee Comments

35. The Committee notes that the Government did not consult with relevant stakeholders prior to the introduction of the Bill.
36. No stakeholders were aware of the Bill prior to its introduction and most only became aware of it shortly before its referral to the Committee for inquiry.

Heritage & Tree Protection

37. Numerous witnesses and submitters commented on the impact of the Bill on heritage and tree protection. The Chair, ACT Heritage Council

Mr Marshall: We think there may be some unintended consequences arising from this bill. We have highlighted a number of areas where we think that could occur and we have made some suggestions, of course, about how we think those matters might be best addressed.

...

Mr Marshall: Certainly and thanks for the question. Regrettably, and it is the case in all jurisdictions in Australia, we do not have a perfect understanding of our heritage places and objects. It is an ongoing evolution of understanding, partly because of resourcing but partly because of an evolving understanding of what are the places that constitute Australia's heritage.

In the ACT we have a backlog of existing nominations but in addition there are probably places out in the ACT community which are also of heritage value which have not yet come onto the radar. Good planning process means making informed decisions. That involves understanding the range of qualities and values which exist in a given location subject to a particular development.

We think that one of the possible consequences of this legislation may be that when an area is declared subject to this piece of legislation, there is no active effort to fully understand the range of values which may exist in that location that have not yet been formally identified through the ACT heritage register. They may be places, as I say, on our existing register or they may be places which are out there in the community but which have not yet come to the attention of someone to nominate those places or to the attention of the council itself.

...

Mr Marshall: I guess in a similar way to our concern about any heritage values or places, we do not want to see heritage ignored in this process, particularly Aboriginal heritage ignored in this process. There may be important heritage values in areas subject to this bill. There may be direct conflict between development proposals and Aboriginal heritage. In fact, there may not be a conflict, but informed decision-making requires that that information is well understood, that the necessary surveys are undertaken and that appropriate steps are taken to protect our heritage into the future.

In a sense, we think that turning off the Heritage Act through this current bill is a very unfortunate step to take for what is often an unrecognised aspect of our heritage. We think that reinstating it, or making sure that the existing provisions can continue to work, would be an important way of making sure that Aboriginal heritage values are recognised in the first instance, but hopefully protected as well.

38. The National Trust of Australia (ACT) comments were as follows:

Mr Martin: Also we are greatly concerned about potential impacts on heritage issues. We have outlined those, I think reasonably well, in our submission, so I do not intend to expand on that. But Brendan wants to expand on one particular issue which has come to our attention more since

putting our submission in. That relates to an aspect of the appeals process. Brendan will expand on that now.

...

Mr Martin: Basically, if it is within one of the precinct zones it actually removes any protection that that site has, because there is no firm registration of that place and therefore it is up to the minister's decision with respect to the heritage issues associated with the site, as we understand it. It removes any protection from the place. Even though it may be provisional or nominated, it does not have any protection under this proposal.

...

Mr Martin: It seems to replace the heritage bill in a number of potential aspects. In particular, with anything other than a registered place, it offers no protection at all. Therefore it supplants the heritage bill in those situations, as we understand it.

...

Mr Martin: Yes, but under the proposed amendments, there is no need, as I understand it, for Heritage Council independent advice to be provided, and therefore independent decisions can be made with whatever information the minister may have at his hand to assist him,. Those sorts of checks and balances are removed within the legislation, as we understand it at this point in time.

39. The National Trust was particularly concerned about the impact of the Bill on the protection of Indigenous heritage on greenfield sites:

Mr Martin: But in the greenfield sites, which this bill extends to, Indigenous artefacts that could well be not identified yet could exist in some of these sites and could be adversely affected as a result of the potential of this act.

Committee Comments

40. The Committee notes that serious concerns were raised about the protection of trees and heritage sites, particularly Indigenous sites, under the Bill.

Centralisation of power

41. Rather than discharge responsibility to the Assembly, the Bill empowers the Minister responsible for planning and the Executive. Many witnesses commented on the centralisation of power and the potential for undue influence.
42. Ms Margaret Fanning spoke of poor outcomes which would come about if the Bill was enacted.

The net result of all these changes is that planning in the ACT will become less informed and guided by planning expertise and much more politicised.

43. The Director of the ACT Division, Planning Institute of Australia said as follows:

Mr Sinclair: It is not a strategic planning approach. Developments should be assessed on a merit basis and not on the basis of who is in first to the exclusion of all other developments, nor on access to the executive. I think they are basically our points.

44. The Walter Burley Griffin Society also expressed concern about the proposed system:

Mr Odgers: In the society's view, the major problem of the draft Planning and Development (Project Facilitation) Amendment Bill 2014 is the specious claims about transparency and accountability, when in reality they threaten a marked decline in democratic processes with inevitable consequential poor outcomes in terms of environmental heritage, design and social outcomes.

...

Mr Odgers: For some years now this routine of true deliberative consultation, where there is feedback and where there is consensus building, has been absent, more or less, from so-called public consultation, even under NCA auspices, although it was a little better than the ACT government. This bill typifies, exemplifies, the dilution of robust and healthy democratic institutions in this city.

45. Concerns about potential 'abuse and influence' were raised:

Dr Kwiatkowski: It will be open to abuse and influence, partly because the definitions are so vague in the legislation. For example, I am very concerned that there are no limits on what the legislation can be used for. In terms of the criteria that projects must be of substantial public benefit or major significance to the territory, there is no definition around that. So in theory any project could fit that criteria and be fast-tracked, even an apartment building or whatever.

...

Dr Kwiatkowski: The other thing is that Shane Rattenbury and others have argued that we need this legislation because it is better than call-in powers. The way I see it, first of all, is that it does not replace call-in powers, so that is a furphy. Second of all, there are additional measures in there which take it further than call-in powers—for example, the removal of the rights of appeal under the ADJR and time limiting Supreme Court

review under the common law. These are not features which are contained in the call-in powers. Therefore, this legislation takes it further.

46. The lack of transparency in the proposal was of concern to numerous community groups:

Mr Edquist: I would like at this stage just to touch on the fact that we think there are very weak criteria for determining what a special project variation and a significant project are. We think it would be better if the current words were withdrawn and replaced by some kind of public interest test where the government had to do a cost-benefit analysis and publish it and was not allowed to duck out by saying, "That is all confidential and in confidence, commercial in confidence."

Ms Forrest: Just a very brief one, thank you. The process of consultation has been so truncated that it has been almost impossible for the Inner South Canberra Community Council to draw up an adequate submission in the time frame.

47. The lack of professional opinion in the processes outlined in the Bill was articulated to the Committee.

Mr Martin: Possibly, but the real issue there is that the powers rest with the minister in many of these aspects. He is making decisions on a whole range of planning, heritage and other issues and replacing expert advice. I do not think one personally can actually have the knowledge to make, if you like, an informed and correct decision with respect to heritage issues, because he has not got training and experience in heritage issues. Therefore, I think the process is flawed in that way if he is not seeking appropriate independent expert advice.

48. Chairperson of the Belconnen Community Council commented on the broad scope of power the Minister has:

Mrs Coghlan: They appear to be very generalised and open-ended. There are no limits, either in size or area or value of the proposed development. I feel that the objectives that are used as criteria are just so vague and non-specific that they could be used to approve anything.

...

Mrs Coghlan: One never knows what influences might occur on the Assembly or on that particular planning minister some time in the future. It is not necessarily just confined to the current incumbents or anything like that, but at the same time there are always pressures that can be brought to bear, and the whole purpose of legislation is usually to limit those pressures.

Committee Comments

49. The Committee notes that concerns about the centralisation of power were raised by many witnesses and submitters.
50. The overwhelming view was that a centralisation of power in the Minister and Executive could lead to the planning system being politicised.

Planning best practice

51. The Committee is concerned that the proposed Bill is not evidence of planning best practice. The Planning Institute commented on the need to retain ACAT appeals.

Mr Sinclair: As evident from many ACAT appeals, the procedural errors are the focus and concerns of appeals such that ACAT now places itself as the decision-maker on DAs where the process has failed. Access to this avenue of appeal must remain. To do otherwise is to reward poor practice and the manipulative, pragmatic management of the system.

52. On the subject of ACAT, the National Trust of Australia (ACT) also expressed concerns:

Mr Preiss: Thank you. We have some considerable concerns about the truncating and elimination of appeals rights. I will not dwell particularly on the removal of merits review at the ACAT level except to say that the number of appeals on heritage matters, or indeed on any matters, that go to ACAT from development applications is minuscule as a fraction of the total number of development applications. In turn, the number of matters that go from the ACAT or anywhere to the Supreme Court is even less than minuscule; it is a fraction of the first group.

53. Belconnen Community Council commented on the potential outcomes which could arise as a result of this Bill:

Mrs Coghlan: I think it [the legislation] undermines the whole system, or potentially. As I say, just looking at it superficially, the impression we get is that it opens the door to unintentional things. It needs a lot more time and examination before the legislation is approved.

54. The Woden Valley Community Council commented on the lack of transparency in the Bill:

Dr Stewart: The second point is that the bill gives the executive—not the parliament; the executive, that is, the planning minister and the cabinet—excessive and unaccountable powers over development associated with projects of significance or special precincts. Even the role of the Assembly is watered down because all the Assembly can do is vote to disallow the instruments that give effect to the proposed fast-track legislation. I guess

that they are two key points about how the institutions of planning are unbalanced as a result of this bill.

...

Dr Stewart: The final point is that, as I understand it, one of the rationales for the bill was that it is going to make the minister's call-in powers more transparent, an objective I think which most people would endorse. However, on our reading of the bill, as put forward, it does not really do this at all. It simply adds a layer of opacity to current practice rather than making the call-in powers more transparent. The problem with the call-in powers, the lack of transparency, should be dealt with by appropriate amendments to the legislation, but certainly not this kind of amendment.

55. Ms Margaret Fanning commented in her submission about the definition of 'public benefit' by which the Minister must make decisions.

The public benefit and importance criteria for seeking a special precinct variation are so broad as to be meaningless.

Committee Comments

56. The Committee notes the concerns that the Bill reflects poor planning policy and lacks transparency.

Mental health facility

57. The Bill contains specific mention of the special treatment to arise for the secure mental health facility proposed for Symonston. No witness indicated to the Committee that the Mental Health Facility could not proceed using the existing planning rules.

Mr Marshall: Specifically, with regard to the mental health facility, I have not looked closely at the footprint of that new facility, if it exists. But I understand that it involves an existing facility which, at first blush, would not appear to have any potential heritage impacts or problems. I suspect that if that proposal was lodged today, the Heritage Council's advice would be a very quick turnaround and would say: "There are no heritage issues with this place. There are no objections to this particular development proceeding."

...

MR COE: Thank you. On a related issue, with regard to the proposed light rail project or the mental health facility, which are two examples which have been cited by the minister as being appropriate or possible projects for which this bill might be applicable, do you believe that the current Planning and Development Act and the processes for amending

the territory plan and getting DAs approved could facilitate the construction of those two projects?

Mr Marshall: I have the view that the existing planning and heritage system has not, in a sense, been the cause of unreasonable delay in projects in the past. It may well be that the Heritage Council has expressed a view not supportive of certain developments, which in a way could slow down government or private sector thinking about particular projects while the nature and form of developments are reconsidered, but of course there is a pathway through that for projects which are of major significance to the territory, through the call-in power the minister has under the Planning and Development Act. When we receive development applications, we operate within a strict statutory time frame which does not allow us to linger over our advice. We have to provide our advice within a relatively short statutory time frame. So I do not support the argument that the Heritage Act or the Heritage Council is a delay or a drag on projects.

Committee Comments

58. The Committee notes the view that the mental health facility could proceed without this legislation if the Government decided to follow the current planning process.

Call-in powers

59. Some witnesses commented on the expectation that call-in powers were going to be removed if the Bill was enacted. Several witnesses advised the Committee that Shane Rattenbury MLA had given them hope regarding the use of Call-In powers. In an email to the Weston Creek Community Council on 20 March 2014, Mr Rattenbury included:

Having looked closely at the legislation, I believe the advantage of the Bill is that it will provide an alternate option to the use of call-in powers, meaning that significant development projects of substantial public benefit for the ACT can be expedited through a more transparent and democratic process than the use of ministerial call-in powers.

The ACT Greens have consistently questioned the use of call-in powers since the 1990s on the basis that they deny access to third party appeals as a mechanism to fast-track developments. We know that major projects are much more likely to trigger the use of the ministerial call-in, so we are pleased that this new legislation introduces a new level of decision making through the Legislative Assembly.

60. In response to this email, the Griffith Narrabundah Community Association stated the following:

Dr Denham: Having said that, when I first read the press release that Shane put out, I thought, "This is really good. We are going to abolish the call-in powers for all but these major projects." I thought, "This is what we really want." The Assembly is going to deal with the major projects and the call-in power is going to go. But that is not what is in the bill, as you well know. The call-in powers are still there.

Committee Comments

61. The Committee notes that some witness believed this Bill would remove the call-in powers.
62. However, the provisions in the Bill are in addition to the call-in powers rather than instead of them.

Appendices

Submissions

ACT Heritage Council
Australian Institute of Architects
Belconnen Community Council
Caroline Le Couteur
Friends of Hawker Village
Griffith/Narrabundah Community Association
Helen Ollerenshaw
Inner South Canberra Community Council
John Ley
Leon Arundell
Margaret Fanning
Martha Kinsman
Max Kwiatkowski
National Trust of Australia (ACT)
North Canberra Community Council
Patrick Stein
Peter Vincent
Planning Institute of Australia
Robyn Coghlan
Thomas Keen
Tuggeranong Community Council
Walter Burley Griffin Society
Weston Creek Community Council
Woden Valley Community Council
Yarralumla Residents Association

Witnesses

Anderson, Mr Tom, Chair, Woden Valley Community Council

Coghlan, Mrs Robyn, Chairperson, Belconnen Community Council

Denham, Am, Dr David, Secretary, Griffith Narrabundah Community Association

Edquist, Mr John, President, Griffith Narrabundah Community
Association

Forrest, Ms Anne, Deputy Chairperson, Inner South Canberra Community Council

Gurnhill, Ms Anna, Acting Manager, ACT Heritage Unit

Kwiatkowski, Dr Max, Private Capacity

Marshall, Mr Duncan, Chair, ACT Heritage Council

Martin, Mr Eric, Council Member And Member, Heritage And Grants Committee,
National Trust Of Australia (Act)

Odgers, Mr Brett, Walter Burley Griffin Society

Preiss, Mr J. Brendan, Member, Heritage And Grants Committee, National Trust Of
Australia (Act)

Price, Ms Deborah, Secretary, Inner South Canberra Community Council

Sinclair, Mr Hamish, Director, ACT Division, Planning Institute Of
Australia

Stewart, Dr Jenny, Chair, Woden Valley Community Council

Straw, Mr Vivian, President, ACT Division, Planning Institute Of Australia

Text of email from Shane Rattenbury MLA to Weston Creek Community Council

The following text was provided to the Committee by the Chair of the Weston Creek Community Council.

From: RATTENBURY@act.gov.au To: info@wccc.com.au

Subject: Planning and Development (Project Facilitation) Amendment Bill 2014

Date: Thu, 20 Mar 2014 07:11:52 +0000

Dear Weston Creek Community Council,

I am writing to let you know about proposed changes to ACT planning laws that will be of interest to you.

Today the Minister for Planning, Simon Corbell, tabled the Planning and Development (Project Facilitation) Amendment Bill 2014, which is designed to facilitate the fast-tracking of major development projects in the ACT. I would like to share my analysis of this legislation with you.

Having looked closely at the legislation, I believe the advantage of the Bill is that it will provide an alternate option to the use of call-in powers, meaning that significant development projects of substantial public benefit for the ACT can be expedited through a more transparent and democratic process than the use of ministerial call-in powers.

The ACT Greens have consistently questioned the use of call-in powers since the 1990s on the basis that they deny access to third party appeals as a mechanism to fast-track developments. We know that major projects are much more likely to trigger the use of the ministerial call-in, so we are pleased that this new legislation introduces a new level of decision making through the Legislative Assembly.

Provided that a proposal meets the stated criteria of being of substantial public benefit and strategic importance to the ACT, the legislation will allow the Government to identify it as "project of major significance" or a "special precinct area" to be given priority through the planning process as follows (NB the process for precinct and projects follow very similar processes, however a precinct proposal for may include Territory Plan variations such as rezoning):

The proposal is subject to community consultation for a minimum of 30 working days. The community will have the opportunity to make comments, and key agencies such as the NCA, the Conservator for Flora and Fauna and the Heritage Council will be consulted

The ACT Planning and Land Authority will then provide a report on the consultation to the Minister and then to the Executive, which assesses whether the proposal meets the criteria, taking into account public and agency comments.

The proposal is then put to the Legislative Assembly via a Disallowable Instrument (DI).

During the disallowance period there is an opportunity for the Assembly to debate the merits of the project and to play a role in the decision making process by disallowing the declaration.

If the DI is not disallowed, the project declaration and relevant Territory Plan Variations come into effect.

A Development Application (DA) can then be lodged, which will then go through the same process of notification¹ and consultation as is currently in place.

Once ACTPLA has made a decision under this process, there is no opportunity for the Minister to exercise call-in powers or for the public to access merits based review in ACAT.

The only avenue for review will be the Supreme Court under common law.

This process means that the decision to fast-track specific projects will be made by all Members of the Legislative Assembly, rather than just one Minister, which is currently the case with call-ins. Elected representatives will be able to bring community concerns to the debate on the floor of the Assembly before the DA process begins.

It provides a transparent and accountable mechanism for the Government to clearly signal its intention to expedite priority projects at the beginning of the decision making process, rather than waiting until the formal process has almost been completed to exercise a call-in. It means that if the project has the support of the majority of the Assembly, it will proceed with certainty and without appeals.

In my work on this legislation with Cabinet colleagues, I raised concerns about the criteria for declaration of precincts and projects under the legislation, and these criteria have subsequently been refined so that it is clear that this process is only to be used where a project is of substantial public benefit and significance to the Territory.

It is intended that this legislation is only to be used in these very specific situations, in which there is impetus to develop within a short timeframe or if there is the threat of ongoing appeals. In August 2013, the Assembly passed a resolution in support of project-specific legislation for the proposed secure mental health facility at Symonston - this bill contains clauses to this effect. It is also envisaged that this bill will be utilised to facilitate the redevelopment of Northbourne Avenue for the light rail project.

As you may know, the ACT Government has previously tabled amendments to the ACT Heritage Act which introduces the capacity for Ministerial call-in powers, something that the ACT Greens and many in the community have been concerned about. I believe that this power made a mockery of the heritage-listing process, and I have requested that the call-in power in the heritage bill be removed. The Government has subsequently committed to amending the Heritage Bill to remove call-in powers. I believe that this project specific legislation is a more transparent, respectful and therefore preferable process to call-in powers in planning or heritage legislation.

It is expected that the Bill will be debated in the Assembly in the April Sitting, at which time I will be supporting the Bill, as I believe that it achieves a more transparent and accountable process than the use of Ministerial call-in powers for planning decisions.

If you would like more information on the details of this Bill or to discuss it further, please contact my office by email or phone.

Kind regards,

Shane

Shane Rattenbury MLA

ACT Greens Member for Molonglo

Minister for Territory and Municipal Services; Corrections; Housing; Aboriginal and Torres Strait Islander Affairs; and Ageing, t: 620 50005 | f: 620 50007 | rattenbury@act.qov.au |