LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
Ms Jo Clay MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),
Mr Mark Parton MLA

Submission Cover Sheet

Inquiry into Planning Bill 2022

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Dear Ben,

ACT Planning System Review and Reform Project

Thank you for the opportunity to make this submission to the draft Planning Bill 2022 (**the Bill**).

The ACT Planning System Review and Reform Project is arguably the most important reform impacting the local building and construction industry proposed in this term of the Legislative Assembly. All members of the Master Builders Association are impacted by the Bill; the upcoming new Territory Plan; and their implementation.

The operation of the ACT planning system directly impacts approximately 20,000 people working in the local industry and helps deliver $4.5 billion worth of building and construction work completed each year. In turn, this helps generate approximately $1 billion in taxes paid to the ACT Government alone.

Unfortunately, the draft Planning Bill has been exhibited in isolation of other key planning instruments and policies, such as District Plans and a new Territory Plan. We acknowledge that these instruments and policies are currently being drafted and, therefore, cannot be exhibited concurrently. As a consequence of the unavailability of the draft Territory Plan and District Plans during the exhibition of the Bill, planning practitioners; industry; and the broader community cannot see much needed context and information to appropriately review and consider implications of the Bill.

The commentary contained in this submission has been informed by the information exhibited with the draft Planning Bill, numerous meetings with representatives of Planning Authority and member feedback.

In addition, this submission has also had regard to the publications on the *ACT Planning System Review and Reform* including, where relevant, specialist consultant reports commissioned by the Planning Review and Reform Team.

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Key Issues

While the finalization of the Bill will require a detailed review of every aspect of the draft, we would like to highlight three key issues for special focus.

- Firstly, the creation of Territory Priority Projects has the potential to deliver a substantial reform providing benefit for the Territory, community and industry. We request that the criteria for declaring a Territory Priority Project be expanded to allow such a designation for private sector projects and other projects which can demonstrate a public benefit b.

- Secondly, further improvement to the ACT Design Review Panel (**DRP**) should be implemented to fully capitalize on the potential of the DRP to help achieve the Planning Review's aim of achieving an outcomes-focused planning system. Further review should aim to streamline and expedite this process for non-contentious projects and allow proponents to rely on the advice received from the DRP and any referral agencies (even if this advice is contrary to the Territory Plan) during the assessment of projects.

- Thirdly, review the neighbour consultation requirements for exempt development so that it provides greater certainty and lower risk of third-party influence in the assessment process.

Summary

The following table provides a summary of our comments on each section of the new Bill.

● Support

● Support with amendments

● Do Not Support

Issues	● ● ●	Comments
Key Principles	●	The key principles of easy to use, certainty, flexibility, transparency and outcomes-focused are supported.
Chapter 2 – Objects	●	The draft Planning Bill incorporates an expanded Object of the Act which is understood to be required as part of the new planning system. While the expanded Object of the Act is supported in principle, it is noted that references to economic aspirations and sound financial provisions are not included. Economic and financial aspirations are key feature of the current Object of the *Planning and Development Act 2007* (***P&D Act***). As the draft Planning Bill will establish the framework and considerations for the future planning and development of the ACT, the economic aspirations of the ACT and sound financial provisions should be central to the Object of the draft Planning Bill. The future development of the Territory is a significant economic contributor and planning has the capacity to be the foundation for both public and private financial investments, contributing to the overall economic prosperity and liveability of the ACT and surrounding regions. Accordingly, it is

Issues		Comments
		appropriate for the economic aspirations of the ACT to be reflected in Section 7 – Object of draft Planning Bill. We note section 7(3)(b) states that planning for population growth is important. To give this objective meaning, the population target should be defined (either in the Bill or in the Territory Plan).
Chapter 2 – Principles of Good Planning	●	The principles of good planning seek to encourage and facilitate an outcomes-focussed planning system, placing a greater emphasis on the role of strategic and spatial planning. The principles of good planning encompass very broad aspirational and subjective qualities. While the principles of good planning contain a number of aspirational outcomes, it is recommended that the Authority consider if and how these principles are to be applied to proponent led Territory Plan Variations and the preparation and assessment of Development Applications. Incorporating principles of good planning or planning principles into planning legislation is a relatively new undertaking with little planning or legal evidence available on the overall impact of interpreting and applying these provisions. Specific regard should be given to the role of principles of good planning in assessment and determination of Development Applications, along with any implications for third-party appeals to the Tribunal. It is also noted that the principles of good planning do not include any commentary regarding housing supply and affordability. The closest reference to this is under principle *(a) activation and liveability principles*, which references living affordability. Living affordability is not a broadly used or understood term. However, many commentators have highlighted the ACT's housing and land affordability problems. Within this context, a principle of good planning should be included which supports the provision of appropriate housing supply and affordability for the benefit of the ACT and its residents. Furthermore, the principles of good planning fail to include considerations such as social need and public benefits. These principles are widely used in other planning legislation to qualify the need for, and benefits of, planning policy and specific developments. The Authority should consider these concepts in the principles of good planning.
Chapter 2 – Ecologically Sustainable Development	●	No comments
Chapter 3 – Territory Planning Authority and Chief Planner	●	No comments
Chapter 4 – Strategic and Spatial Planning	●	The inclusion of Chapter 4 – Strategic and spatial planning – is a positive step by the Authority to elevate the role of strategic planning in the ACT. While the new Part 4.1 of the draft Planning Bill references (in very broad terms) the role of District Plans, it fails to acknowledge or consider the

Issues		Comments
		benefits of existing strategic and master planning, such as structure plans and location-specific master plans. The Authority, industry and community have invested considerable time and effort into the preparation and adoption of structure plans and master plans. It would be a poor outcome to lose this significant body of strategic and master planning work in a new planning system. Structure plans and master plans further inform the Authority's desire for a planning system with a direct line of sight from strategic planning to development outcomes. Accordingly, it is recommended that the Authority recognise the importance of structure plans and master plans within Chapter 4 – Strategic and spatial planning. The following specific comments are made in relation to each part of Chapter 4: Planning Strategy: • Section 36(1) is supported; however, this should be expanded to mandate a review at least every 10 years. • Section 36(3) should include a requirement for the planning strategy to be reviewed to consider whether it continues to reflect the long-term planning policy and goals for the ACT, ***including the Objects of the Planning Act*.** District strategy: • Section 37 should be expanded to require district strategies to include a district strategy code for each district which is contained in the Territory Plan. This section should clarify the district strategy code takes precedence over other development codes, or vice versa. Statement of planning priorities: • Section 38(1) should be amended so that the *'Minister must give the territory planning authority a written statement'*. Estate Development Plans: • This section should be amended to streamline the process for developing an Estate Development Plan (**EDP**) and amending the Territory Plan to incorporate an EDP, to be run in parallel or as an integrated process. • This section should clarify any public consultation requirements for Estate Development Plans. • The sections have not changed from the P&D Act. This is a missed opportunity to clarify the status of an EDP in the period between its approval and its integration into the Territory Plan (which can be extensive). There is further opportunity to streamline the process for later development approvals that are within the estate and consistent with an already approved EDP.
Chapter 5 – Territory Plan		A review of the draft Planning Bill Chapter 5 – Territory Plan – has been undertaken with regard to the existing provisions of the *P&D Act*. The key observation is that the draft Planning Bill omits a number of key sections in the *P&D Act*. These are:

Issues		Comments
		• Section 52 Statement of strategic directions • Section 53 Objectives for zones • Section 54 Development tables • Section 55 Codes in territory plan The Planning Bill – Policy Overview document does not provide commentary on the methodology and reasons for omitting the sections of the *P&D Act* detailed above. Therefore, it is only possible to speculate as to the intentions of the Authority and future composition of the new Territory Plan. Commentary on Chapter 5 Territory Plan is provided below. • Section 54 – Development tables – of the *P&D Act* may no longer be required noting the two-stream planning system (exempt development and development requiring consent). However, the new Chapter 5 – Territory Plan – does not provide any indication as the future construction of permissible or prohibited development types. The draft Planning Bill should outline how this key planning matter will be dealt with in a new Territory Plan. • The omission of Section 52 – Statement of strategic directions – appears to have been done without any consideration of replacing this part in a new Territory Plan. The Authority should clarify what (if anything) will replace the existing Territory Plan statement of strategic directions. While it is reasonable to assume that principles of good planning will replace strategic directions, the correlation between Chapter 2 of the draft Planning Bill and the new Territory Plan is unclear. • Chapter 5 – Territory Plan – also removes Section 53 – Objectives for zones – in the *P&D Act*. The existing section 53 requires zone objectives to be consistent with the statement of strategic directions. Conversely, draft Planning Bill Section 44 – Contents of the Territory Plan – does not identify how zone objectives will be drafted or distinguish any relevant considerations. This provides for considerable uncertainty for industry, community and the Authority in the preparation of zone objectives within a new Territory Plan. • The removal of Section 55 – Codes in the Territory Plan – is also omitted, and new Section 44 – Contents of the Territory Plan – does not include any requirements for a code (development or precinct). Removing or omitting Section 55 – Codes in the Territory Plan – from the draft Planning Bill should be reconsidered, as development and precinct-specific codes currently perform an important function in the Territory Plan by providing local context, identity and character (where specified) to an area along with site specific controls and considerations for the future development of that area. Chapter 5 – Territory Plan – appears to have been unnecessarily condensed or edited to remove potentially important provisions and content within the new Territory Plan. It is recommended that the Authority reconsider Chapter 5 and reintroduce requirements around zone objectives and development and precinct specific codes. In addition, it is noted that neither Chapters 4 or 5 of the draft Planning Bill contain any provisions which requires the National Capital Design Review Panel to have input into the drafting or review of the new Territory Plan. Located on the Planning Review and Reform website is a report titled *ACT*

Issues		Comments
		Planning System Review and Reform – Achieving Improved Built Form, Place Design and Public Realm Design Outcomes, prepared for the ACT Government by Hodyle & Co and dated December 2021. This extensive report was prepared for the purpose of providing *"an evidence based research report on how to deliver best-practice design outcomes for built form, place design and public realm in the ACT"*. The report outlines seven core recommendations for the ACT to improve design outcomes through planning. None of the seven core recommendations have been incorporated into the draft Planning Bill. This is considered a significant missed opportunity which is likely to undermine the Authority's capacity achieve an outcomes-focussed planning system.
Chapter 5 – Amendment Process		Part 5.3 (Territory Plan – major plan amendments) and Part 5.4 (Territory plan – minor plan amendments) of the draft Planning Bill outline the framework, processes and requirements for undertaking amendments to the Territory Plan. Territory Plan amendments are characterised as either major or minor amendments. Minor Territory Plan amendments are limited to similar provisions as contained in the current *P&D Act*. Maintaining a pathway for minor Territory Plan amendments is necessary part of maintaining the Territory Plan. The list of minor amendments is very prescriptive, which is unlikely to allow the Authority to exercise discretion where an unforeseen minor amendment is required. It may be worth considering a provision within this part of the Bill which allows the Authority to undertake a minor amendment beyond the prescriptive measures, so as to give the Authority greater flexibility in the application of minor amendments. In contrast, a major plan amendment is any amendment which does not fall under the definition of a minor plan amendment. Part 5.3, Divisions 5.3.1 to Division 5.3.9 of the draft Planning Bill, details the process and requirements to secure a major plan amendment. The pathway for a proponent-initiated and Authority initiated major plan amendment is extensive. In addition, the major plan amendment process provides little to no certainty, with several points where a proposed amendment could be refused or ended. Finally, Part 5.3 (Territory Plan – major plan amendments) contains almost no timeframes for each step of the processes and a proponent-initiated major plan amendment is not afforded appeal rights The Planning Bill – Policy Overview Figure 7 seeks to illustrate the path of major plan amendment. Our review indicates that: • Authority initiated major plan amendments has approximately 12 separate steps and/or decision points in the process; and • Proponent-initiated major plan amendment has approximately 15 separate steps and/or decision points in the process. In addition, the major plan amendment process contains very few statutory timeframes, meaning the proposed amendment could remain with either a proponent; the Authority; or the Minister at various points of the process for an unlimited period of time. A major plan amendments process which does not incorporate statutory timeframes creates uncertainty for proponents; the Authority; and the community, along with

Issues		Comments
		diminishing transparency for all parties. As major plan amendments are costly and time-consuming exercises, it is critical that statutory timeframes are incorporated in Part 5.3 of the draft Planning Bill. This will also provide consistency with the Development Assessment process, which is subject to detailed statutory timeframes. When considering incorporating statutory planning timeframes into Part 5.3 of the draft Planning Bill, it is recommended that the NSW Government A new approach to rezoning Discussions paper, dated December 2021 (**NSW Rezoning Discussion Paper**), is considered. The NSW Rezoning Discussion Paper outlines the challenges of the rezoning (NSW version of a major plan amendment) and expresses the desire for NSW to transition to a 'plan-led' system which focuses on the delivery of place-based planning, with a strategic planning hierarchy which seeks to deliver a clear line of sight from the NSW State to site based planning and development outcomes. In many ways the NSW planning aspirations for a 'plan led' system is consistent with the key principles of the ACT Planning Review and Reform project. The introduction NSW Rezoning Discussion Paper states inter alia (emphasis added): *"Changing the zoning of land or the controls applying to land – referred to in this paper as the rezoning process – translates strategic planning into statutory controls. However, the rezoning process has **become unwieldy**, **resulting in weaker planning outcomes**, **unnecessary delays** and **higher costs**.* ***We continue to see a large volume of rezonings or changes to land-use controls happening within a process that can be complex and time-consuming**. These inefficiencies create opportunities for delays.* *As we strengthen strategic planning and place-based planning through ongoing reforms, we expect to see fewer ad hoc, site-specific rezonings that are more likely to cause these inefficiencies. However, we know that we need to improve current processes to optimise the economic and environmental benefits of development within an efficient planning system.* *The economic benefits of an efficient and consistent rezoning process not be underestimated – especially as we recover from the impact of the COVID-19 pandemic. **A more streamlined and predictable process will help encourage investment, improve supply and create jobs."*** Specifically, the NSW Government has identified the need for the reform referencing delays and complexity which are in part attributed to: • ***Timeframes –** There is a lack of accountability and certainty about timeframes, including for the exhibition process and agency submissions. For example, legislation prescribes timeframes and appeal rights for the assessment of development applications, but there is no equivalent legislative requirement for planning proposals.*

Issues		Comments
		• ***Duplication of assessment*** *– Planning proposals often go twice to a council meeting (before gateway and before finalisation), and twice to the department (at gateway and finalisation).* *(page 9, NSW Rezoning Discussion Paper)* To address the issues in the NSW Planning system rezoning process, a simplified five step process is proposed with specific timeframes for each step this is summarised below: 1. Scoping preliminary work on need and scope of rezoning (10-week timeframe) 2. Lodgement of Rezoning Application (1 week timeframe) 3. Public Exhibition (6-week timeframe) 4. Post-Exhibition amendments/responses (13-week timeframe) 5. Assessment and Finalisation of Rezoning Determination (17-week timeframe) The NSW rezoning process is proposed to take a total of ***37 weeks***. It is recommended that Part 5.3, Divisions 5.3.1 to Division 5.3.9, of the draft Planning Bill be revised with the intention of simplifying the major plan amendment process and incorporating statutory timeframes to each part of the process and appeal rights be extended to proponent-led major plan amendments. These revisions will improve new planning system by providing benefits the public (increased transparency and certainty), proponents (understanding and transparency) and the Authority (efficiency and resourcing for defined periods of time).
Chapter 6 – Significant Development – Design Review		Part 6.2 – Design Review Panel – of the draft Planning Bill outlines the functions and responsibilities of the Design Review Panel (**DRP**). A review of the current provisions of the *P&D Act* and Planning Bill – Policy Overview demonstrates that the Authority has not sought to expand the functions and responsibilities of the DRP. This decision is perplexing, as the planning reform project seeks to deliver an outcomes focussed planning system which moves away from quantitative planning controls to qualitative considerations to improve the planning and development of the ACT. Within this context, the DRP would add value to the new planning system. As outlined in recommendation 5, the DRP should be required under the Bill to perform a review function of any design elements of the new Territory Plan. These inputs will likely benefit the construction of the new Territory Plan and, ultimately, development outcomes at a site level. In this regard it is recommended that the Part 6.2 – Design Review Panel, Section 93 – Function of design review panel, is expanded to include the following matters: • Structure and content of the new Territory Plan (where related to design); • Major amendments to the Territory Plan (where related to design); and • Estate Development Plans.

Issues		Comments
		Many other Australian planning jurisdictions require DRP advice and review of planning instruments and controls. It is a missed opportunity to not utilise the skills of the DRP in broader function under a new planning system.
Chapter 6 – Significant Development – Pre-DA Community Consultation		We support the removal of pre-DA community consultation for the reasons outlined in the Policy Overview Paper. We note that there is nothing in the Bill preventing applicants from seeking community or expert input into the early stages of a new development's formulation. We also note there is nothing in the Bill preventing this early feedback from being presented to the Design Review Panel or the Territory Planning Authority to support the application through the development assessment process.
Chapter 7 – Development Assessment and Approvals – General Comments		Section 7 – Object of the Act – seeks to create an effective, efficient, accessible and enabling planning system that is (in part) 'outcomes focused'. It is understood that a key driver of the 'outcomes-focussed' planning system appears to be a move away from quantitative planning controls to qualitative planning consideration and the prospect of more flexibility in the assessment of Development Applications. This is a significant shift in the planning system which is likely to substantially increase the scrutiny of Development Applications, assessment processes and decision making. It is likely to have had a range of implications for Proponents, the community and the Authority. Key observations of Chapter 7 of the draft Planning Bill are listed below: 1. Chapter 7 of the draft Planning Bill appears to have largely transferred (or retained) many provisions of the current *P&D Act.* The requirements, processes and decision-making provisions for Development Applications warrant a broader review to determine if they are fit for purpose in the new planning system. The focus of this holistic review should determine if the proposed provisions in the draft Planning Bill align with the key principles of the planning system review and reform project. This is currently considered a significant missed opportunity within the draft Planning Bill. 2. Chapter 7 does not incorporate provisions relating to, nor focusing on, the delivery of an 'outcomes-focussed' planning system. Given this is a key requirement under the Object of the Act, it should be reflected in Chapter 7 and include provisions outlining how such a consideration would be exercised by the Authority in the assessment and determination of individual Development Applications. 3. Approximately 100 plus pages of provisions are dedicated to preparing, submitting, notifying, assessing and determining Development Applications under Chapter 7. Many of these provisions focus on procedural matters which do not appear to add value or improve the planning system. Chapter 7 of the Bill warrants a review through a lens of simplifying the provisions to more in line with the key principles of the planning system review and reform project. 4. A number of new provisions are inserted into the Chapter 7 of the Bill. These provisions include additional processes and subjective considerations for the assessment and determination of development applications. The introduction of broader and more subjective

Issues		Comments
		considerations in the assessment and determination of Development Applications is likely to reduce certainty in the planning system. Furthermore, these provisions have the capacity to be interpreted very differently depending on the position and expertise of the decision maker (i.e., the Authority or the Tribunal). Comments are provided on key sections of Chapter 7 in the draft Planning Bill 2022 below.
Section 163 Development applications – authority may request information	●	Section 163 of the Bill allows the Planning Authority to request further information on a Development Application more than once (no limit on requests for additional information). Industry's experience of further information requests under section 141 of the *P&D Act* indicates that multiple separate requests for further information can significantly delay and draw out the assessment and determination processes. Furthermore, it can result in the need for an applicant and the proponent to draft multiple sets of revised drawings or reports forming part of a DA submission. This generally adds time and costs to the DA process for no discernible benefit. It is recommended that Section 163 be reviewed with a view of limiting the number of times the Planning Authority can request further information, with a view of improving and streamlining the management of a DA, along with correspondence with applicants and reducing overall DA assessment timeframes.
Chapter 7 – Entity Referral	●	The operation of the current entity referral process is one of the major reasons adding uncertainty and time delays into the current development assessment system. While we note some changes are proposed in the Bill to incentivise referral agencies to provide responses within statutory timeframes, much more reform is needed in this area to improve the efficiency and effectiveness of the referral agencies process. Sections 166 to 169 of the Bill are dedicated to processes, requirements and consideration of entity advice relating to a Development Application. In addition, Section 185 outlines the provisions for the Planning Authority to consider when determining a Development Application subject to entity advice. Entity advice is an important consideration for the preparation of Development Applications and assessment/determination of a DA. However, it is possible at times for entity advice to be inconsistent with broader planning strategies, controls and outcomes. In general terms this is not the fault of entities, rather it reflects the lens (i.e., engineering, waste management or tree protection) by which an entity reviews part of a Development Application. The proposed shift to an 'outcomes-focussed' planning system could exacerbate inconsistencies between entity advice, the draft Planning Bill and a new Territory Plan. This will likely require the Planning Authority to make greater planning judgements on the value and appropriateness of entity advice. Current referral agency difficulties which should be addressed in this section include:

Issues		Comments
		• Changing standards by which referral agencies assess applications. Often referral agency advice is different pre-DA lodgement, during DA assessment, and then during final certification of the works. The Bill should require referral agencies to only assess applications against the relevant development code in place when the application is lodged. • Assessing applications against new standards or standards which do not form part of the Territory Plan. It is unreasonable to expect a proponent to comply with a development standard that is not contained in the Territory Plan. To the greatest extent possible, the standards used by referral agencies should form part of the Territory Plan. This will require new standards to be added to the Territory Plan, either at inception or through a Territory Plan amendment process. • Adhering to timeframes. The Bill has made some attempt to require referral agencies to submit responses within statutory timeframes by allowing the Authority to depart from the advice if it is not submitted on time. In practice, we doubt this will provide sufficient incentive for all referral agencies to respond on time. A critical element of Chapter 7 should be to reinforce the Authority as the central decision maker. The Authority should be able to make a decision contrary to a referral agency after weighing and balancing all referral agency responses. It is inevitable that referral agency responses will conflict with each other, especially as more development occurs in brown field sites with significant existing site constraints. It is recommended that Section 185 of the Bill be reviewed with the objective of providing greater certainty on the processes and considerations for resolving any inconsistencies between entity advice in the context of an 'outcomes focused' planning system. The proposed provision of Section 185 of the Act appears to increase the current test to *"significantly improve the planning outcome to be achieved".* Conflicts between entity advice and the planning framework are a source of significant frustration for industry and, in many instances, create an impasse where DA applicant and proponents can become stuck between the Planning Authority and entities. We note that it this impasse can lead to significant delays in the assessment of Development Applications and also result significant issues for a proponent as part of the Building Approvals and prior to obtaining Occupation Certificates. We recommend that the Planning Authority holistically review the role of entities in the DA assessment and determination process with a view of increasing processes certainty and reducing possibilities for conflict between entities and the Planning Authority.
Division 7.5.7 Pre-decision Advice		Section 177 – Authority may give advice – introduces a new stage into the development assessment processes. While the Planning Bill – Policy Overview paper asserts that section 177 will facilitate the shift to an outcomes-focussed planning system, the overview fails to demonstrate how this additional stage will improve the overall planning outcomes for the ACT. Furthermore, consideration should be given to the measurable benefits of section 177 along with its contribution to facilitating a more transparent, certain and outcomes-focussed planning system.

Issues		Comments
Section 181 Considerations when deciding development applications		Section 181 of the draft Planning Bill will replace section 120 of the *P&D Act*. The key observation is that the matters to be considered for deciding a development application will be substantially increased to include a number of subjective considerations under section 181 matters (c), (d), (e) and (f). The introduction of broader and more subjective considerations in the assessment and determination of Development Applications is likely to reduce certainty in the planning system. Furthermore, these provisions have the capacity to be interpreted very differently depending on the position and expertise of the decision maker (i.e., the Authority or the Tribunal). While the Planning Bill – Policy Overview paper justifies the need for these additional considerations, given the Planning Authority is drafting District Plans and new Territory Plan, surely such considerations would be better placed in the planning instruments rather than the new *Act*.
Section 183 Essential design elements		Section 183 introduces the term essential design element into the Bill. An essential design element is a new consideration under the draft Planning Bill, which is nominated at the discretion of the Planning Authority and/or Tribunal. No other information is provided as part of the draft Bill and, therefore, it is not possible to determine its application and implications for the development assessment process. As drafted, section 183 may cause issues with amendment applications and otherwise exempt development. We recommend that Planning Authority reconsider the need for the term essential design element, along with sections 141(2); 183; and 201 (2) of the draft Planning Bill.
Chapter 8 – Territory Priority Projects		The additional of provisions for Territory Priority Projects is supported and should be further expanded to allow the benefits of this provision for other development types. The significance of the priority projects to the community and the public benefits should be prioritised over the opportunity for third-party merit appeals. The criteria should be expanded to include: • Projects beyond only government-initiated infrastructure, including private sector investment in other development types that have potential to create new employment opportunities or grow the ACT's economy. • Major private proposals that deliver significant public benefit. Examples to be expanded to include warehouse and logistics centres, private educational facilities, affordable rental housing and student accommodation. Further, we request that there be more flexibility in the criteria. For example, if 2 or 3 criteria were achieved and it can be demonstrated that there is a public benefit in declaring the project a Priority Project, that should be sufficient. Finally, we encourage the Government to streamline the process for declaring a Territory Priority Project so this can occur quickly to capture private sector opportunities.
Chapter 9 – Offsets		No comment.

Issues		Comments
Chapter 10 – Leases and Licenses		We note that a review of the Crown lease system was outside the scope of the current reform. However, we think it is important to note that, from a development application perspective, there is a significant missed opportunity in streamlining the process for obtaining a Crown lease variation. At present the process requires a Development Application to obtain permission to make the variation, and then a second, subsequent, application for calculation of the Lease Variation Charge (**LVC**). Each application takes time and attracts separate reconsideration/review rights. There is no reason why the LVC calculation cannot form part of the Development Application for the approval of the variation, thereby significantly truncating the process and providing much greater certainty to developers who are trying to manage feasibility studies and financial requirements with market expectations as to affordability of product.
Chapter 11 – Management of Public Land		No comment
Chapter 12 – Development Offences and Controlled Activities		No comment
Chapter 13 – Enforcement		See comments below on implementation.
Chapter 14 – Access to Information		Refer to comments about access to information for exemption declaration applications.
Chapter 15 – Review of Decisions		The existence of extensive third-party review rights in the ACT Planning System is a major contributor to uncertainty for proponents. We note that this section of the Bill has not been substantially reviewed from the existing *P&D Act*, and this is a missed opportunity. Third-party appeals cost appellants, respondents and the Territory significant financial and people resources, and cost the participants significant amounts of money. We would encourage the Government to be more ambitious in reviewing the review processes, particularly given the subjectivity of the decision-maker's task has been vastly increased through the expansion of the criteria in section 181 (previously section 120). The current *P&D Act* includes a provision (section 121) which had the potential to limit and had previously been interpreted by the Tribunal to limit, third-party review rights to those matters that were not rule compliant, thereby excluding from review the more subjective aspects of the decision-maker's task (being the section 120 matters). The precise meaning of section 121 had always been unclear because of poor drafting in the current Act. In the last 2 years, the ACAT has reversed its previous position on the meaning of section 121, finding that the provision does not constrain the scope of third-party review. However, we are of the view that there does need to be a clearly defined constraint on, or parameters around, the scope of third-party review. Retaining section 121 in its current form is not appropriate because, first, the ACAT has limited its meaning so that it is virtually meaningless and,

Issues		Comments
		second, its current drafting is not appropriate in the context of a revised Territory Plan which seems unlikely to be rule/criteria based. However, the concept of constraining third-party review in some way should be a consideration in the Bill. The Bill proposes to vastly expand the decision-maker's obligation to take into consideration qualitative matters. Those qualitative matters will, by their very nature, compete with each other and it can be foreseen that different decision-makers will very frequently reach different views about the 'correct' decision. Permitting third-party review rights to remain in their current indiscriminate form will be a significant impediment to certainty of decisions and the reduction of timeframes between lodging a DA and obtaining stamped plans. We note that the Bill outlines development types which are subject to review and those which cannot be reviewed. We support the list of matters that are exempt from third-party ACAT review, including territory priority projects; development located in the city centre, a town centre, an industrial zone, the Kingston Foreshore or the University of Canberra site; and other specified development. However, we note that this will still allow third-party review for development types which are considered suitable for particular zones on subjective considerations such as building design. Third parties will have the opportunity to make submissions about these matters during the assessment phase, and these submissions will be reviewed by referral agencies, and subject matter experts employed in the Authority. While we appreciate that third parties may wish to request an explanation for the Authority's ultimate decision, in most cases these matters should not progress to ACAT for review. We encourage the Government to consider ways to provide more certainty for proponents by expanding the list of development types which are not subject to review by third parties.
Chapter 16 – Miscellaneous		No comment
Chapter 17 – Transitional Provisions		It is important that transitional provisions be included and be subject to consultation, before the finalization of the Bill. The new Bill and resulting Territory Plan has the potential to significantly impact Development Applications currently in the process of being prepared. If the Bill or Territory Plan impacts the highest and best use of land, then the transitional provisions should address how the financial impact will be compensated by the Territory. The Territory may consider, for example, a clear statement which allows Development Applications currently being prepared (but not yet lodged) to proceed under the *P&D Act* or be assessed in a modified way. A period of two to three years may be required to allow a suitable transition period.
Regulations – Exempt Development and Exemption Declarations for Single Housing		The most common form of development in the Territory is the construction, modification and extension of single housing. The retention of single housing as exempt development, and retention of the exemption declaration process to deal with minor encroachments, is an important to ensure single housing can be assessed in an efficient manner.

Issues		Comments
		An important principle for exempt development is that an application to the Authority is not required and no public consultation is required. This means a single house can be constructed with confidence, subject to compliance with the relevant development codes and National Construction Code. We support the continuation of the exemption declaration for single housing and request that de facto public consultation requirements not be added for proponents. While we do not object to directly adjoining neighbours being made aware of the existence of an exemption declaration application, this should not extend to consultation rights; opportunities to object; or any obligation on the proponent to demonstrate that notification has been completed. Methods to make information available to adjoining neighbours via a web site or electronic mail should be explored to ensure this requirement balances the rights of home builders and adjoining neighbours appropriately. The Policy Overview Paper indicates that new exemptions will be created. We encourage further policy development to explore opportunities to expand the exempt development categories for other low-impact minor development.

Planning System Implementation

As stated elsewhere in this submission, the ACT Planning reform is a substantial exercise that aims to significantly improve the functioning and operation of the current system. The move to a more outcomes-based system will introduce opportunities, yet a number of implementation challenges.

It would assist industry if the Government explained the administrative and operational changes that will be effected to support the successful implementation of the new planning system.

At the very least we support Government employing additional resources in the development assessment and enforcement areas to ensure these parts of the Bill are successfully implemented.

With the Planning Authority being given greater responsibility to assess Development Applications, including resolving conflicts between referral agencies; and greater community visibility and potentially submissions to applications, the skills and seniority of planners within the Authority should also be reviewed to ensure they adequate to support the successful implementation of the Bill.

Industry and community will also require significant assistance to ready itself for the new planning system. Notwithstanding that transitional provisions will exist, consideration should be given to government funded training and education programs for industry and community.

Recommendations

The MBA makes the following recommendations to improve the Bill:

1. Amend Section 7 – Object of the Act – to reintroduce economic aspirations for the people of the ACT in accordance with sound financial principles.

2. Clarify the role and effects of Part 2.2 – Planning Principles – and expand this section to include:
    - Promotion of housing supply and affordability
    - Social need and public benefit considerations

3. Expand Part 4.1 – Strategic and Spatial Planning – to incorporate structure plans and master plans.

4. Revise the Draft Planning Bill 2022 to incorporate existing Sections in Chapter 5 – Territory Plan – of the Planning and Development Act 2007.

5. Territory Plan Amendments:
    - Simplify the Processes and include statutory timeframes for Major Territory Plan Amendments
    - Support the inclusion of Proponent-initiated amendments

6. Expand the role and functions of the Design Review Panel to facilitate the outcomes focused planning system. This has the capacity to improve many facets of the planning system such as:
    - Structure and content of the new Territory Plan (where related to design);
    - Major amendments to the Territory Plan (where related to design); and
    - Estate Development Plans.

7. Refine Development assessment processes and approval provisions of the Draft Planning Bill 2022.

8. Expand the definition of a Territory Priority Projects to include consideration of proponent-led developments of public and social benefit to the ACT.

9. Reform third party review rights to constrain the scope of review with respect to qualitative considerations, to reduce the prospect of different decisions on purely subjective grounds.

10. That Government commit to review the Bill after submissions to the draft Territory Plan are reviewed, in case submissions identify issues which require addressing in the Bill.

Conclusion

The release of the Bill contains a significant amount of work by the Territory to consolidate several years of community, industry and other stakeholder feedback, and policy work completed by the Territory. The public exhibition period is likely to raise many issues for the Government to consider. To assist the Government to properly review the submissions, we would like to encourage the Government to consider a further round of stakeholder meetings so that our comments can be clarified, and proposals to review the Bill be tested by Government.

If you would like to discuss any element of our submission or to setup additional stakeholder meetings, please contact me on [redacted].

Yours sincerely,

Michael Hopkins
Chief Executive Officer