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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Submission to the ACT Legislative Assembly Standing Committee On Planning, Transport, And City Services

Martha Kinsman **14 November 2022**

Thank you for this opportunity to respond to the Legislative Assembly Standing Committee's inquiry into the Planning Bill 2022. I have been a resident of Canberra for most of my life, interspersed with periods working overseas and interstate. I have been a resident of [redacted], Belconnen since 2008. Now retired from paid employment, I am currently a Visiting Fellow with the Australian Studies Institute at the ANU. My contact details are at the conclusion of this submission.

Although the Bill exhibits numerous flaws, this submission concentrates on my concern with its extraordinarily autocratic decision-making model and the way its processes will disenfranchise individuals and community groups who wish to influence planning decisions.

Background

I first raised these issues in my submission to the SLA's 'Have Your Say' invitation on the exposure draft of the Bill. I would be happy to provide another copy of that submission on request. That submission included recommendations regarding the need for more inclusive governance, more precision in the Bill's intent and objectives and greater procedural fairness for ordinary residents. However, the SLA appears to have rejected matters of governance as a relevant and legitimate focus of the consultation process. Like many others, I feel that my comments were largely ignored (see, for example, CPAG 11/22 [November] Newsletter, https://shoutout.wix.com/so/91OHhgkxh?languageTag=en&cid=bde41f7f-1721-4a95-9565-251051826384#/main).

Focus of this Submission

My focus in this submission is on three key issues.

1.The Bill provides for an excessive concentration of power and authority in the Territory Planning Authority.

Sole authority for planning decisions rests with a single person, the Chief Planner, who is also the Territory Planning Authority. Provision for non-judicial review rests with the same person, in his/her capacity as the Territory Planning Authority. Because the person ultimately responsible for initial decisions is also the person responsible for internal review of those decisions, there is a risk of conflict of interest inherent in the process.

Accountability of the Territory Planning Authority is minimal. The scope for Ministerial directions is very limited and, in any event, ACT Ministers have generally been reluctant to

issue directions except in cases of obvious crisis. Most unusually for a statutory authority, there appears no requirement to provide and publish an annual report or other mechanisms for oversight by the Legislative Assembly. The role of the Assembly appears to be limited to making 'requests' to the Minister to issue directions to the Territory Planning Authority.

The Bill needs to provide greater accountability of the Territory Planning Authority to the Legislative Assembly. This should include a requirement to provide an annual report. Consideration should also be given to a formally constituted Territory Planning Commission, along the lines of the South Australian model, embracing a diversity of expertise and with a direct line of reporting to a Legislative Assembly Standing Committee. This would provide some greater oversight to decisions, especially with regard to the internal review process.

2. The Bill severely curtails the scope for, and weight given, to community consultation.

Despite assertions that the Bill improves the scope for community consultation, several of its provisions will diminish rather than enhance community engagement.

Principles and processes of 'good consultation' need only be 'considered' by the TPA. This is insufficient: there should be a *requirement* for them to be *observed and implemented* in the development approval process.

The abandonment of pre-DA consultation means that residents will only be able to engage with a proposal after the development application has been lodged. Even the most constructive comments and suggestions are much less likely to be accepted and incorporated if they incur the significant costs of amending detailed development plans. One example is the SLA's agreement to widen the roads and provide more parking for the Lawson Stage 2 development following pre-DA discussions with Belconnen community members. Had these discussions occurred only after the development application was lodged it would have been very much more expensive and, therefore, much less likely that community suggestions for wider roads and adequate parking would have been incorporated.

Pre-DA consultation and other community input should be part of the required process of community engagement with due weight given to the balance of community views as well as those of developers.

Principles of 'good design' are wrongly assumed to be largely incontrovertible and to provide an adequate basis for 'good' governance and 'good' outcomes. There is an equally erroneous assumption that if the interests of developers are served, then so will be the interests of 'owners'. The Bill's Explanatory Statement asserts that, in reducing government prescription, the Bill '*provides space for developers <u>and therefore owners</u> to meet planning outcomes in way they believe best meet the particular conditions and circumstances*' (p.31ff, my emphasis). The assumption that interests of developers and owners will necessarily align within a framework of 'good' planning principles is not borne out either by historical experience or by either contemporary or critical design theory. Wishing away differences

between developers and residents is not going to produce good planning solutions for Canberra. Even less visible in this hierarchical model are the interests of non-property owning residents such as renters and aspirational homeowners who should have a legitimate voice in the planning and development of new estates/subdivisions.

The extent of reliance on 'good design' principles is a very high risk strategy with potentially detrimental consequences for both Canberra's built environment and its democratic ethos. These risks should be properly foreseen with appropriate safeguards included in an amended Bill. Given the radical and untested 'outcomes-based' approach to planning and design, the Bill should also include a statutory review period to allow a full assessment of the success and pitfalls of the enacted legislation.

3. The Bill imposes unreasonable limits on citizens' rights to procedural fairness and to seek judicial review of decisions made by the Territory Planning Authority.

The Bill imposes serious limits on Canberrans' right to procedural fairness and judicial review through ACAT. As emphasised in the Scrutiny Committee's report on this Bill, these rights are enshrined in the *Human Rights Act 2004.* There is no supporting evidence for the Explanatory Statement's claim that the limits it imposes are justified on grounds of 'proportionality' in the interests of 'timely decisions', efficiency and effectiveness.

The limits on access to judicial review will bias planning decisions in favour of vested property and construction interests, some of whom seem prepared to misrepresent the current arrangements as being weighted too much in favour of individuals. For example, the CEO of Master Builders ACT has recently asserted that none of the planning objectives will be delivered '*as long as anyone can appeal to the [ACAT] for a few hundred dollars and hold up innovative development proposals for years'* (Canberra Times, 2 Nov. 2022). This seriously misrepresents the current situation as is clear from the provisions of ACT's current *Planning and Development Act 2007* and the experience of many individuals who have sought recourse through ACAT.

Even if all other aspects of this deeply flawed Bill are retained, I urge the Planning Committee and the Legislative Assembly to protect the democratic right of Canberrans to seek judicial review of planning decisions by confirming and preserving their access to ACAT.

I would be happy to elaborate on these issues and/or on my earlier submission.

Dr Martha Kinsman
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