



Mick Gentleman MLA
Manager of Government Business
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister for Corrections
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

Standing Committee on Planning, Transport and City Services
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

By email: LACommitteePTCS@parliament.act.gov.au

Dear Chair

INQUIRY INTO THE PLANNING BILL 2022

Thank you for the opportunity to make a submission to the Standing Committee on Planning, Transport and City Services' (the Committee) Inquiry into the *Planning Bill 2022* (the Bill) introduced in the ACT Legislative Assembly on 21 September 2022.

The introduction of the Bill in the Assembly followed an extensive review of the *Planning and Development Act 2007* (P&D Act) to contemporise and enhance the planning system to better reflect the relationship of planning with the environment, cultural and built heritage and responsiveness to climate change, while retaining many features of the existing P&D Act that remain fit for purpose. The proposed changes arising from this review were incorporated into the [Planning Bill – Policy Overview Paper](#) that was provided with the Bill for public consideration.

The Bill lays the groundwork for a shift to an outcomes-focused planning system, which prioritises the achievement of high-quality design and good planning and development outcomes for the people of the ACT.

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601

 +61 2 6205 0218  gentleman@act.gov.au

 @GENTLEMANMick

 MickGentleman

 mick.gentleman

Extensive consultation occurred with the Canberra Community during the review of the planning system for the ACT. The Government has taken into consideration all feedback received in drafting the Bill including over 300 submissions received on the consultation draft of the Planning Bill. It was not uncommon to receive a number of views on varied issues, and the Government has sought to balance these views in the Bill, while also considering other relevant Government policies.

The background information below provides a summary of the Government's consideration and position on the issues raised during the review, and I would like to provide the Standing Committee with the below advice on matters raised with respect to the Bill, to aid the Committee's understanding of these matters.

Objects and Principles of Good Planning

In establishing the reformed planning system, the Bill requires a new object that considers the broader purpose of the reformed planning system and its integration with other legislation and ACT Government policies and strategies, and how the planning system can support and enhance the lives of people living in the Territory. This includes integration with the *Nature Conservation Act 2014* and its principles.

Sustainable development is a fundamental part of the P&D Act, and the Bill maintains the importance of this concept and expands it to encompass *ecologically sustainable development*. This will involve the effective integration of economic, social and environmental values when making planning decisions to enhance the cultural, physical and social wellbeing of all Canberrans. The definition of ecologically sustainable development was changed following feedback received during the consultation process. The Bill's definition takes into account the wide variety of feedback received and seeks to align with other policies including the UN Principles (Sustainable Development Goals).

The Bill establishes the principles of good planning to assist in achieving good planning outcomes. Good planning outcomes are developments that are people focused, perform well and integrate effectively into their site context; they are developments that are 'good neighbours'. A good outcome considers built form, public spaces, interactions with surrounding blocks, response to climate change, heritage, the environment and more. It considers community needs now and into the future. In the reformed system, the Territory Planning Authority will be more descriptive of what good planning outcomes are and, more specifically, what the desired outcomes are for an area. The Bill establishes the framework for achieving a good outcome. The proposed nine district strategies, the proposed new Territory Plan, new Design Guides and other supporting and guiding material, together with other government policies will provide further guidance on how a good outcome will be achieved; all of these must be consistent with and reflect the principles of good planning outlined in the Bill

An outcomes-focused planning system means that the primary focus of the Bill is on encouraging planning outcomes that go beyond the built form to consider broader policy outcomes, including important matters like the environment and climate-resilience. Whilst not precluding mandatory provisions, the adoption of an outcomes-focus seeks to harness the innovation of all Canberrans towards meeting the challenges faced by our community.

The object and principles of good planning establish the broad focus of the planning system and establish the context in which good planning outcomes are then defined at various points in the planning system. Proponents of development proposals must consider these factors in designing and delivering projects which must meet the requirements of the new outcomes-focused Territory Plan.

Housing

The Government acknowledges the role planning plays in relation to housing supply. The new Planning Bill and regulations set the framework for a range of initiatives and programs that the Government is pursuing to provide housing and choice for the people of the ACT.

How the planning system can facilitate housing and in particular affordable housing for Canberrans, was a key theme that emerged during the consultation process. The Planning Principles outlined in the Bill reference housing, affordability, wellbeing, accessibility among many other principles; and this reflects the Government's position on the importance of such principles for the planning and development in the ACT.

The matters for consideration in the Objects of the Bill include the requirement to plan for population growth. The Bill also notes the key elements of the system include District Strategies, a new scale of planning in the ACT. The draft District Strategies take the Planning Strategy 2018 and the ACT Housing Strategy 2018 further, and identify locations and approaches that could deliver more housing, including more social housing. The Government is committed to providing a sustainable supply of housing for the people of Canberra and the reforms to the Planning System, including the Bill, new draft Territory Plan and the draft District Strategies represent this and provide proposals for how this could occur, while respecting the other important qualities of the Territory.

Through the consultation on the draft District Strategies and the draft new Territory Plan the Government is asking the community to provide feedback on suggestions for accommodating urban growth and where more housing could occur. Additionally, the Government is considering whether rezoning in parts of Canberra might be an option. This includes whether more residential homes should be built within existing suburbs through increasing dual occupancy developments. Changes in this space (for example, allowing for dual occupancy on larger blocks in RZ1 areas of the city or expanding RZ2 zones) could provide for more homes in many of Canberra's established suburbs.

The Bill, draft District Strategies and draft new Territory Plan build on existing ACT Government endeavours to deliver housing choice for Canberrans. This includes more housing on transport corridors and, in and around group and town centres. Delivery of housing in these areas provides for greater access to employment, schooling, services and amenity. This has been identified in a recent Productivity Commission report as key considerations in providing affordable housing. Partnering with the Commonwealth Government, through the Housing Accord also provides more opportunities to unlock quality, affordable housing supply over the medium term.

Climate Change and Environmental Protection

The Government was considerate of climate change and environmental protection when reviewing the Bill, and the importance of strong environmental protection and climate change action is recognised in the object of the Bill and principles of good planning. The Bill builds on, and significantly improves, the current framework in the P&D Act. The Bill and its subordinate legislation must engage with other laws and policies that support climate resilience and environmental

protection. The Bill also specifically refers to the consideration of other ACT Government policies and strategies in the strategic and spatial planning processes established by the Bill, providing a direct connection and opportunity for integration of environmental and climate change policy into planning policy.

It is also important to note that an environmental impact assessment is required wherever a development proposal may have significant adverse environmental impacts. The Bill requires that expected environmental impacts be considered through a consistent process, always starting with the preparation of a scoping document by the Territory Planning Authority and informed by expert entities and statutory office holders. This will deliver benefits through greater certainty to proponents as to the matters required to be addressed and also to interested community members, through a more transparent and thorough process.

Community Consultation

Community consultation is a fundamental element of a good planning system. There will be significant improvements to the transparency of processes throughout the Bill. The Bill introduces the Principles of Good Consultation to guide the various consultation processes in the Act and to make sure that community views inform decision making and that consultation is balanced, respectful and timely. Following feedback during the consultation process, changes were made to include principles of good consultation within the Bill, rather than subordinate legislation.

The Bill also requires consultation as part of the preparation of strategies and other key functions and outputs of the planning system

The Bill requires that application documents for Territory Plan amendments and Development Assessment (DA) processes are proactively published on the Territory Planning Authority's website.

The Bill removes the mandatory requirement for pre-DA consultation, because, on balance, it is not considered to add value to the development process beyond the early notification of a proposal and identification of issues of contention, which often remain issues of contention during the DA assessment. The process also created confusion as to who was leading the consultation.

Decision Making

The Bill retains the role of the Legislative Assembly in overseeing the creation and amendment of planning requirements against which developments are assessed. For example, the Legislative Assembly retains its power to approve the initial Territory Plan, and to review and disallow amendments to the Territory Plan.

As per the current P&D Act, the Legislative Assembly does not have a role in reviewing decisions on development applications. This would not allow for an efficient and effective planning system, and it is appropriate to defer individual decisions to the independent Territory Planning Authority, appropriately removing politics from such decisions. A number of declarations in the Bill are notifiable instruments, providing transparency and giving public notice of the use of the power, while providing certainty to the process and timeliness of projects.

The effect of entity advice on a development application has been refined in the Planning Bill. Where advice is provided by a prescribed entity within the provided time, the Territory Planning Authority generally must not depart from that advice in deciding a development application.

However, an application may be approved contrary to entity advice (other than advice from the Conservator of Flora and Fauna in relation to a registered tree or declared site) where, having considered the land zoning, applicable desired outcomes under the Territory Plan, and where an environmental impact statement is required, any reasonable alternative design options, the decision-maker considers that departing from the entity advice is required in order to achieve a good planning outcome.

The Bill makes limited provision for the Minister or the Chief Planner to depart from Conservator advice in relation to declared protected matters. In all cases, the Minister and the Chief Planner must be satisfied that departing from the relevant advice would significantly improve the planning outcome to be delivered, would provide a substantial public benefit and is consistent with the offsets policy. These are important limitations and protections.

Role of Chief Planner

The Chief Planner's role as retained under the Bill, is the statutory officeholder who performs the functions of the Territory Planning Authority, consistent with the functions currently set out in the P&D Act. The only additional function of the Chief Planner under the Bill is to promote the strategic planning of the Territory, high-quality design and good planning outcomes.

Design Review Panel

The Design Review Panel's functions are being carried across from the P&D Act. The panel's establishment, functions, membership, consultation requirements are set out in Part 6.2. The Minister may also make terms of reference and other rules relating to the operation of the panel.

Territory Priority Projects

The Bill sets out what constitutes a Territory Priority Project (TPP) in Chapter 8 and the process of declaring such projects. The draft Planning Bill removes the Minister's 'call-in' powers for development applications. Instead, the Bill includes powers for the Chief Minister and Minister to jointly declare a project to be a TPP, with the Minister to decide a development application for a TPP.

Several comments were received during the public consultation on the Bill supporting the Minister deciding a TPP development application, rather than the Chief Planner as proposed in the consultation version of the Bill. The Bill has been changed to reflect this feedback. The Minister may, at any time, seek advice from the Territory Planning Authority on the proposed declaration of a TPP. The Minister must receive advice from the Territory Planning Authority prior to deciding a TPP development application.

Enforcement

While not strictly a matter for the Bill, the Government has allocated funding to support the expanded role of the Territory Planning Authority so that it can effectively monitor and enforce the new regulatory system. This funding extends to making sure that users of the legislation are aware of their responsibilities and obligations under the legislation and associated regulations.

Background Information

The introduction speech and the explanatory statement, which were both tabled with the Bill, explain the purpose of the Bill and the benefits it will bring to Canberra.

I would also like to draw the Committee's attention to the ACT Planning System Review and Reform Project webpage available at: [ACT Planning System Review and Reform Project | YourSay ACT](#) providing an overview of the new planning system. A [Consultation Report](#) addressing the comments received during community consultation and a [Key Changes Paper](#) summarising the comments received during community consultation, are also available the YourSay website.

Information on the draft District Strategies can be found [here](#) and the draft new Territory Plan [here](#).

I would be pleased to meet with the Committee to answer any subsequent questions they may have.

Yours sincerely



Mick Gentleman MLA
Minister for Planning and Land Management

16/11/2022