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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Inquiry into the Planning Bill 2022

Submission Author: Ian Hubbard

[redacted]

I am making a submission on the Standing Committee on Planning, Transport and City Services for the Inquiry into the Planning Bill, 2022. I have not had sufficient time to consider all of the issues raised by the draft Bill but hope that others have. Thank you for the opportunity.

Submission

The Planning Bill 2022 fails to get the balance right between the needs of the community and the demands made by the property development industry.

Protection of Residents from the Impacts of Development

Drafting the Planning Bill and presenting many complex interrelated issues simply is an enormous task. Chapter 2 Objects, principles and important concepts sets the foundation. While presented at a high conceptual level there is a good attempt to capture the key issues.

One key issue that is missing is a requirement to protect existing residents from the negative impacts of development. You have to go past a lot of fine words before coming to Part 2.1 Objects and key principles s9 1) c) tucked into the **Meaning of *ecologically sustainable development***,

(c) the maintenance and enhancement of cultural, physical and social wellbeing of people and communities;

Again, there is no recognition that residents should be protected from negative impacts of a proposed development. The development should do 'no harm' to the neighbouring residents or community.

This is further expanded in s9 (2)

maintenance and enhancement of cultural, physical and social wellbeing of people and communities includes—

(a)creating and maintaining well-serviced, healthy, prosperous, liveable and resilient communities with affordable, efficient, safe and sustainable development; and

(b)conserving or enhancing places of special aesthetic, architectural, cultural, heritage, historic, scientific, social or spiritual significance; and

(c)providing for integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction; and

(d)accounting for the potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable development and design.

Again, the maintenance of social wellbeing of people and communities does not explicitly include protection from the adverse impacts of development. If one of the stated aims of this Bill is to '*put people at the heart of the planning system by focussing on liveability, prosperity and the wellbeing of all Canberrans'* this concept of protection has to be included as point (a).

There is a social pact between a resident who makes the most important purchase in their lives and chooses to live in a specific locality. Residents chose to take out lifelong mortgages for the security, amenity and self-actualisation that home ownership affords. It's to provide shelter for loved ones. They do not expect the Government to change the nature of their suburb by making significant changes to the planning rules and the development activities that can occur in their neighbourhood. They do not expect the quiet enjoyment of their home to be heavily impacted by a development next door.

Residents rely on the Government to protect their interests. Where in the Bill are the examples of greater protection for the community and residents from inappropriate development? Has the important role of Government Planning and Development agencies in protecting the interests of the Canberra community been forgotten? Protecting the interests of the home buyer, residents and community is the responsibility of the Government and the planning and development agencies. This responsibility cannot be ignored or outsourced to the property development industry.

The development of a new Planning Bill that does not address the anxiety and stress caused by intrusive developments on neighbours and the community is denying residents rights and simply pandering to the property development industry.

Communication, consultation and dispute resolution

In the Planning Bill Part 2.1 Objects and key principles outlines that the well-being of residents will be promoted by enabling a planning system that 'provides a scheme for community participation' s7 1) c). This is one of the three objects in the Planning Bill. This is expanded at s7 2) (f). provide for community participation in relation to the development of planning strategies and policies, and development assessment.

The Government through the Planning and Development Agency has put a lot of energy and resources into communicating and consulting on the Bill. It has engaged with all the stakeholder groups and those interested in planning and development issues. There are mixed views on how successful this exercise was in reflecting the ideas coming from the

community. Others raised issues about the volume of documents, time allowed and resources required to provide meaningful input.

Part 2.2 s11 provides a comprehensive explanation of the Principles of Good consultation and is summarised as:

In undertaking consultation under this Act, a person must consider that consultation should be accessible, balanced, inclusive, meaningful, resourced, respectful, timely, transparent and understandable (*principles of good consultation*).

Balance

Regarding the principle that good consultation needs to be **balanced**,

(b)consultation is *balanced* if—

(i)it is undertaken in a way that facilitates and encourages constructive responses from a wide range of stakeholders; and

(ii)community views are considered together with the views of other stakeholders.

This overlooks the fact that stakeholders come to the consultation with very different resources and expertise. The residents and community members engaged in consultation are typically volunteers and not experts in planning and development matters. This creates a significant imbalance in the potential contribution to the outcome of any consultation. Industries such as mining, gambling, energy, banking and property development bring their considerable resources into play during Government consultation and decision-making processes. They have considerable vested interests in these processes so this imbalance is well known. Acknowledging this fact the challenge is how to address the imbalance and deliver this important principle of good consultation? How do you resource the community with information, expertise and professionals to provide balance in consultation? An important component of the Minister's consultation guidelines required in the Bill is going to be this resourcing and whether it is sufficient to match the effort put in by the planning and development industry.

Timely

Regarding the principle that good consultation needs to be **timely**,

(g)consultation is *timely* if,

(i) it is undertaken at an appropriate time in the planning process; and
(ii) it is undertaken in a way that considers the needs of stakeholders and facilitates participation; and

Example

consultation is undertaken in a way that considers holiday periods or other ACT Government consultations

(iii) it allows sufficient time for stakeholders to engage with other members of their group or organisation to form a collective decision;

The notification and consultation periods currently in the Bill are far too short to enable the achievement of this principle. Fifteen or thirty working days to submit input into the statutory consultation processes for development are inadequate and disrespectful from a

residents or community member's point-of-view. To put this period in perspective, the proponent of the development could have been working on the proposal for a number of years and consulting with the Planning Authority during this time. Going back and forth until they had agreed that a development application was worth submitting and likely to get approval. It is at this point that the community and neighbour is made aware of the proposed development and given fifteen days to respond.

There are so many reasons why this notification is not adequate from a neighbours or communities point of view, including the potential for missing the notification, insufficient expertise or resources to make comment, volume and complexity of the documentation provided, and inexperience with engaging in the development application process. It is almost impossible for a community group to form a collective position on a proposed development in 15 days considering the demands made on their volunteer members.

An important component of the Minister's consultation guidelines required in the Bill is going to be the initial notification of a development and the notification period for comment. The more time provided improves the quality and meaningfulness of the consultation. A suggestion is that the community be notified as soon as the Planning Authority is made aware of the proposal. It's a futile effort if the statutory consultation commences once it's a done deal between the proponent and the Planning Authority.

Early notification potentially results in better outcomes for the Canberra community. A change to the existing Bill is the removal of the pre-DA Community Consultation requirement. Under pressure from the property development sector this requirement had been progressively watered down. The Planning Bill 2022 removes this requirement completely.

Pre-DA consultation is proposed for removal 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 costs to the proponent, time delays in bringing product to market, and furthering the adversarial relationship between the community and proponents are considered to be much greater burdens than the limited benefit of early identification of issues and the potential of achieving a 'social licence' for development, which often does not occur as varying views are often held by community members. While pre-DA consultation is proposed to be removed, there will be significant improvements to the transparency of processes throughout the Planning Bill. These include application documents for Territory Plan amendments and DA processes being proactively published on the planning website, and improvements to strategic and spatial planning processes, through district strategies, to provide greater clarity about how areas may change and evolve in the future.

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This is a clear indication that the Planning Bill 2022 tilts the balance even further towards a proponent. There are a few proponents who conduct genuine consultation and

engagement that is beneficial to the community and the development. There are other proponents who have no interest in consultation and are adversarial from the beginning because they know that there project will have a significant negative impact on the community. Experienced participants in the planning process can see from the outset which projects will be controversial. This is a small percentage of all development applications. Some proponents chose to ignore obvious impacts on neighbours or the broader community because they own the land and should be able to do whatever they like. Their holy grail would be to remove the community from the 'heart of planning' and remove any opportunity for third party consultation or appeal. Effectively avoid all scrutiny of developments and decision-making. These are the developers that the community needs protection from because their only motivation is profit without delay. Neighbours and the community as an annoying third party and this view is held by some Government Ministers.

With the removal of the pre-DA consultation process there is a simple opportunity to provide an early warning notification for neighbours and the community that helps deliver another principle of good consultation transparency. Included in the list of documents that the Planning Authority proposes to make available on its website would include the initial documentation from the proponent where the Authority is first notified of a development proposal. This would trigger the electronic notification of neighbours and the community that a development is proposed. No time lost as all parties are notified from conception. That's transparency.

Proponent led Territory Plan Variation

The Planning Bill 2022 includes a new process for a proponent (lessee) to amend the Territory Plan. Prior to this it was only the Government who could propose an amendment to the Territory Plan. Proponents would lobby the Minister to change the Territory Plan on their behalf and the Minister would need to direct the Planning Authority to undertake this amendment. The Government proposes to increase transparency and avoid the perception of conflict or corruption.

The most common amendment sought by proponents was to alter the existing zoning of the property they owned to a new use with a higher value. For example from broad-acre to high density commercial and residential. The motivation for this was to make a lot of money. The approval by Government of these type of changes have been bought to the attention of Corruption Commissions regularly. The question needs to be asked as to why this new process is necessary. Can't the proponent sell the broad acre and buy land which is already zoned as high density commercial and residential. This is what most developers do. Is there additional profit that a proponent can obtain by lobbying for this change?

If the Government has the responsibility to manage ACT land on behalf of the community to the greater benefit of the community why would they hand over the ability to determine land use to others? It was difficult to find any part of the Bill that specifically outlined a responsibility for the Authority to protect the asset which is the land the buildings owned by the Government on behalf of the ACT community. It was hard to see how the broad range

of key elements of the Bill could be achieved if a proponent could initiate a significant change in land use. If their key motivation for this change was to enrich their own organisation this must come at the expense of the Canberra community. It was hard to see how the elements in Chapter 2 of the Bill, particularly s7, 8 and 9 would be taken into consideration. Proponent initiated amendments to the Territory Plan narrow the opportunities for planning and land use to be determined on behalf of the community.

The Bill needs to be improved by not allowing proponent initiated amendments to the Territory Plan. The Bill needs to include principles regarding the stewardship of the asset, in land and buildings to ensure that these are not handed over on favourable terms to organisations at the expense of the community. Transparency would also require early notification process for such proposals as outlined above. Engagement of the community and assessment of alternatives to the proposed zoning change and development that might provide greater delivery of community needs and infrastructure.

The real value of a proposed amendment and development needs to be assessed through a number of independent reports and studies. An open tender process would enable a more transparent market value based transaction that would result from the change of use. Including the opportunities forgone by the community if the land was available for schools, hospitals and other community facilities. As our population increases well located properties for these uses become scarcer and more expensive if the Government is required to purchase them on behalf of the community.

From an equity perspective, if a business organisation (whether it be a for-profit or not-for-profit) is able to initiate these amendments to the Territory Plan so should the community. The Government should support and resource community alternatives to the proposal. That would put 'people at the heart of the planning process'.

Lease Variation Charges

To improve transparency and ensure that the public is getting value for money the assessment of the Lease Variation Charge (LVC) should be published on the Authorities website. This should be done for all development applications that are seeking a lease variation. The assessment formula for LVC already has a 25% discount built into it. These assessments are currently undertaken by Valuers subcontracted by the proponents. The valuations should be arranged independently through ACT Treasury's Revenue Office and paid for by the proponent. Part of this process should be an initial estimate published on the Authorities website to provide an indication of the potential revenue delivered by the variation and then confirmed once approval is given to the development. Information should also be provided on the likelihood that the LVC is not required to be paid by the organisation or will be waived by the Treasurer. Lease variation charges are an assessment of the monetary value given to the proponent and forgone by the community through allowing a variation. These sums can be in the millions of dollars and currently there is limited visibility and transparency.