



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

Submission Number: 53

Date Authorised for Publication: 22 November
2022

Submission to the Inquiry into Planning Bill 2022

Caroline Le Couteur



I was one of the 97 people or organisations that put a submission into the government's consultation process on the new planning bill. My submission is later in this document.

The Planning bill consultation report has 9 instances (10 if you include the definition of it term) of the magic words "Agreed – change made to Bill ". Only one of them "Principles of good consultation should be included in the Planning Bill" really lined up with what I said in my comments.

So I would like the Planning committee to look at the many issues that the community, including me, brought up and the government did not act on. Many of the issues are good and worthy of inclusion.

FYI the Nine "agreed to change"s are

1. Additional terms should be defined in the Planning Bill.
2. Reference to the Ngunnawal people should be removed / retained.
3. Heritage outcomes should include cultural heritage in addition to natural environment conservation.
4. Planning for population growth, combined with the impacts of climate change, should consider implications for energy, food and water security.
5. Principles of good consultation should be included in the Planning Bill.
6. The Chief Planner's ability to veto a territory priority project is undesirable, given the Chief Planner is not politically accountable.
7. Plans/Strategies should be reviewed every 1 / 2 / 5 / 10 years.
8. Territory Priority Project declarations should include private sector opportunities.
9. Territory priority project should only require satisfaction of one criteria: private or community developments providing economic or social benefits.

This is the submission that I put into the government's consultation process.

Comments on New Planning Bill

The government has spent 3 years or so working on a new planning bill. Meanwhile housing affordability in Canberra has worsened and it seems to me that Canberra has become less environmentally sustainable. Housing affordability and environmental sustainability are both issues that

are very affected by the planning system in Canberra. The substantive planning settings have not been changed by this bill. Zoning and the various rules are the same. The territory plan has not been altered by the process.

I realise that the Territory Plan is to be amended and consultation on it will open this year. Hopefully it will be more effective in dealing with Canberra's substantive planning issues.

I understand that process is important, and I am sure that the processes in Canberra's planning system can be improved. However the improvements in this bill are not large, while the problems with what is being built in Canberra are. As far as I can see we are building a less, not a more, sustainable Canberra.

All quotes in this submission are from the ACT Government "NEW PLANNING ACT – POLICY OVERVIEW PAPER" also known as ""Planning Bill – Policy Overview March 2022" unless otherwise noted.

Specific Issues

Outcomes-based planning

The paper says "Through the Act, we will set the framework for an 'outcomes-focused' Territory Plan " What is very unclear is how this 'outcomes-focused system' will in fact work and how it will deliver better outcomes.

The policy paper says "An outcomes-focussed planning system means that our primary focus is on the achievement of good planning and development outcomes across the various processes of the planning system. Good planning outcomes can be achieved at the different scales of the planning system. An outcomes focus goes beyond the built form and considers the broader policy outcomes that can be achieved through the planning system, such as wellbeing, health, recreation, employment, housing and environment outcomes." I am sure we all support that.

At first glance I assumed outcomes-based meant that a development would be assessed after it had been built to see if the desired outcomes were achieved? I wondered if buildings be demolished/ altered if they don't create the expected outcomes? Will there be enough compliance staff? It seems that with the current planning system the compliance regime has not resulted in significant deterrence of offending behaviour. Will this change under the new Act?

However the next paragraph says "This means a system that focuses on the substantive matters to be addressed without specifying in detail how that will be achieved. It is one that is centred on the quality, results, and performance of planning system outcomes, rather than rule compliance.

So it is clear that although it is called 'outcome based planning', it is not based on actual outcomes. It is based on expected outcomes. So you could say it's the same as the current system except there will be less rules and more criteria. I am relieved that at least, like the current system, Development proposals must be consistent with the Territory plan.

What I have written above is hopefully a too narrow and pessimistic interpretation of the new 'outcomes' focus. There will be new things that the Authority can consider such as "the performance

and suitability of a development proposal in the site and site surrounds, including its interaction with existing developments and as yet unconstructed development proposals.” Would this mean that the government will stop approving buildings that shade other buildings, or building on high conservation value sites or turning our town centres into wall to wall towers?

The Directions paper prepared as part of the development of the new planning bill has led to more direction papers which will guide decision making. In particular “Direction DC6 outlines that the Planning Authority should be provided with the ability to exercise discretion in favour of high-quality development outcomes. The outcomes focus of the Territory Plan will support improved development outcomes and allow for approval of design solutions where they meet the performance outcomes of the Territory Plan.”

This could lead to high quality outcomes. Equally the discretion that it gives to the Authority could give developers scope to build things that are profitable but not in any other way high quality. It is not clear how the Authority will operate so that developments are really high quality, or how each of the broader considerations in the planning principles and the objectives will be considered as part of planning decisions.

In addition, there are several references in the new bill to “planning outcomes”. For example, “desired future outcomes”, “good planning outcomes” and “relevant planning outcomes” features in key elements of the Act, a number of the planning principles, in the authority’s functions and in supporting reports for draft major plan amendments. A development can be approved contrary to entity advice “if it will significantly improve the planning outcome to be achieved”. It is important that “planning outcome” be defined, and understood as to how this outcome is arrived at.

Board for new Authority

The new Authority should have an advisory board to try and ensure it meets the overall objectives for community and it uses its considerable discretion wisely. I suggest the new board should include at least a representative from ACTCOSS, the ACT Climate expert panel, the indigenous community, Canberra Conservation Council or other biodiversity related group, architects and planning professionals and the combined community councils.

This should help keep the Authority in touch with the real world built impact of its decisions and what others think are high quality outcomes. The new Authority will have a lot of power to make decisions and internally review its own decisions. This is particularly important as the Authority has more discretion to approve ‘high quality’ developments that would not otherwise be approved or that might be approved but at the expense of, for instance, environmental considerations.

Additionally in the same way that we now have Design Review Panel to advise on important DAs, there should be a Planning Review Panel to provide independent advice on the Territory Plan and the District Level Plans. This would help to ensure the territory plan and associated documents provide for equitable distribution of social and economic activity and opportunity for all Canberrans, long term environment sustainability and housing affordability.

Offsets

I have concerns about offsets as a concept. Usually high grade habitat is replaced/offset by lesser land. Regardless of that, the developer should fully fund the offset in perpetuity. I have friends working as volunteers on grasslands in Gungahlin. They were told the site they were working on was an offset site. That is not right. It is literally privatising the gains and socialising the losses. I suspect that if developers were forced to fully fund offset sites then there would be very few offsets.

Territory plan variations

Consultation about the territory plan as distinct from specific development applications is hard to do, and in general ACTPLA does not try hard to do it. Territory plan variations usually have very little publicity. This is a reason why the Planning committee oversight is important. However the bill as presented will mean that Territory plan variations will no longer automatically be sent to the Planning committee for consideration. It should be noted that the committee only inquires into Territory Plan Variations if it feels it is necessary.

The idea of consulting about a territory plan variation at the same time as other policies which have planning impacts are consulted about makes sense. The important proviso is that the consultation must include the text of the proposed territory plan variation, not just general ideas and that it is made clear to the community that the result of a consultation may include a variation amendment. These amendments should also be referred to the Committee.

Principles of good Consultation

Principles of Good consultation

I am surprised that the paper does not consider what the principles of good consultation might be. This is despite the ACT government having been involved in community consultation for all the time of its existence. Principles of good consultation need to be embedded in the new Act. Guidelines are not good enough.

In writing about consultation, the government says “During public consultation on the Planning Bill, community views will be sought about the principles that should be included in the guidelines and how the principles should be given effect in the reformed planning system.”

It does not say that it will pay attention to, or follow the community views. In my experience the community is sick and tired of having their opinion asked thru low cost (to the government) online ways and then having their opinions ignored. That is how the Yoursay website seems to have evolved.

Its possible that our views are not always ignored but that is certainly the impression that most of the public has of government consultation.

The “Housing Choice” deliberative planning exercise seemed like it would be a step forward in community consultation in planning. I understand that the people who took part in it felt very positive about their contribution and the outcomes.

However that positivity has vanished because the government has, it seems, ignored the outcomes of the process. This is very disrespectful to the community as a whole and the participants in particular. It is definitely was not good consultation in the end.

The ACT does not have a local government in the way that other jurisdictions in Australia do. Thus the Authority should aim to do an exemplary job of consulting with the community as our political system makes planning only one of many issues in the 4 yearly elections. Voters make a choice for the best party overall, but that does not mean they agree with all the parties policies. Most local governments are not party based, but the Legislative Assembly has become party based. This leaves Canberra residents without any effective way to complain about even very problematic developments. Going to ACAT is not always possible, and it is always very expensive and time consuming.

The government should include the principles of good consultation in the bill and be prepared to firstly justify the principles that they chose and secondly follow them.

There has been quite some work on what constitutes good consultation in Australia and internationally. Developing these principles should include good practice developed elsewhere so that we may build on the learning of other jurisdictions.

Territory plan Consultation

It appears as though the requirement for the Territory Planning Authority to respond to community views as part of a major plan amendment process has been removed too. I also hope this is a mistake. Whilst the government isn't required to do as the community says, it does need to have due regard to the comments made, and if the Territory Planning Authority is not required to formally consider public consultation, and note the government's response to each of the community's concerns, then this is a serious step backwards.

Pre-DA consultations

In the section of the paper about Pre-DA Consultation (which the bill will abolish) the paper says the idea of "achieving a 'social licence' for development, which often does not occur as varying views are often held by community members" is not a good reason because it may not happen.

This seems like it may be the government's view – there are different views held by community members so why bother consulting? I hope I have misinterpreted this comment.

I think it is important that pre-DA consultation is retained as it is fairly universally agreed that some consultation with at least the local community on major developments that will affect them before all aspects of the design are cemented is best practice. I cannot see how removing the requirement to do it will improve the system.

Governance

As elected representatives, MLAs do have an accountability role in such matters. I would like to see better accountability on contentious projects, either through the introduction of particular consultation procedures (e.g. through Panels) or alternatively with the ability to disallow such an instrument in the Legislative Assembly. There needs to be some sort of circuit breaker for highly contentious planning proposals, and our current system does not allow for it.

I'm pleased to see that consultation is recognised as important in the planning bill and look forward to it being clearly articulated in the bill.

My proposed Authority board would also be an important way to improve accountability and governance.

Principles of good planning

The bill has 8 principles. All of them seem relevant. What is needed is guidance on how they will be prioritised and implemented.

ESD definition

Most other definitions of ESD or Ecologically Sustainable Development focus on the environment as a whole not one species. The definition in the ACT includes "the maintenance and enhancement of cultural, physical and social wellbeing of people and communities". While this is a good goal, it is not appropriate as part of ESD. That's why the 'E' stands for Ecologically and seeks to take a whole of environment view.

I am also surprised at the inclusion of "achievement of economic development" in the definition of ecologically sustainable development. It is not in most definitions of ESD. The current definition talks about the "effective integration of social, economic and environmental considerations in decision-making processes" that are achievable through implementation processes such as the precautionary principle, inter-generational equity and conservation of biological diversity. The new definition effectively prioritises the achievement of economic development. The new definition seems like it stands for Economically Sustainable development not Ecologically Sustainable Development

Leasehold system

The leasehold system gives the ACT government the ability to finetune what is done on leasehold in the ACT. However the government says that "The reformed planning system aims to be more accessible and easier to use. The existence of lease and development conditions is inconsistent with this easier to use vision. For that reason, the Planning Bill will not provide for the continued operation of lease and development conditions."

This reduces complexity but reduces the capability of the government to fine tune developments. It seems short sighted to get rid of these. Possibly they are just being renamed into a Project Delivery Deed which maybe entered into as a condition of sale of land. It could be used to ensure that undertakings entered into when a lease was purchased are adhered to at the time of the development application. And, if these lease and development conditions are no longer in the lease, will those

elements appear elsewhere (such as controlled activity orders) to allow the Territory Planning Authority to hold lessees accountable on the same sorts of issues found in lease conditions?

I assume that like the lease system, it will be short on enforcement. To the best of my knowledge the ACT government has not cancelled leases because of not meeting lease conditions, with the exception of some residential blocks that have not been built on.

Planning and District Strategy

Requiring consultation on the planning strategy, and that it included planning related policy from other ACT government policies and strategies seems like a good idea.

District strategies also seem sensible, as long as there is good consultation, the Assembly can disallow them and it is clear how they relate to other planning documents. I hope that District Strategies will result in certainty for the community about what can and can't be developed on, and the types of developments that can be developed. I know that this has been a recurring issue in the current planning system.

Conclusion

We all want the planning system to deliver high quality outcomes. But 'high quality outcomes' are sometimes different for different people. I don't think this bill really advances out collective decision making in this regard. What it seems to have done is give more discretion to the Chief Planer and Authority to advance their and/or the government's view of high quality outcomes. As always, planning is a political process.

Caroline Le Couteur

[REDACTED]

[REDACTED]

[REDACTED]