



**Legislative Assembly for the
Australian Capital Territory**

Standing Committee on Planning,
Transport and City Services

Inquiry into Planning Bill 2022

Legislative Assembly for the Australian Capital Territory
Standing Committee on Planning, Transport and City Services

Approved for publication

Report 12
10th Assembly
December 2022

About the committee

Establishing resolution

The Assembly established the Standing Committee on Planning, Transport and City Services on 2 December 2020.

The Committee's areas of responsibility are:

- City Renewal Authority
- Suburban Land Agency
- Planning and land management
- Transport
- City services including waste and recycling
- Housing (excluding service provision); and
- Building and construction

You can read the full establishing resolution [here](#).

Committee members

Ms Jo Clay MLA, Chair

Ms Suzanne Orr MLA, Deputy Chair

Mr Mark Parton MLA

Secretariat

Ms Miona Ikeda, Acting Committee Secretary (from 21 November 2022)

Ms Kate Mickelson, Assistant Secretary (Acting Committee Secretary until 21 November 2022)

Mr Adam Walker, Assistant Secretary

Ms Lydia Chung, Administrative Assistant

Dr David Monk

Ms Kathleen de Kleuver

Ms Sophie Milne

Ms Emma-Kate Weaver

Contact us

Mail Standing Committee on Planning, Transport and City Services
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

Phone (02) 6205 0199

Email LACommitteePTCS@parliament.act.gov.au

Website parliament.act.gov.au/parliamentary-business/in-committees

About this inquiry

The Planning Bill 2022 was presented in the Assembly on 21 September 2022. It was then referred to the Standing Committee on Planning, Transport and City Services as required by clause 5 of the establishing resolution. This clause allows committees to inquire into and report on bills within two months of their presentation.

The Committee decided to inquire into the Planning Bill 2022 on 21 September 2022.

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Acronyms and abbreviations

| Acronym | Long form |
|-----------------------------|----------------------------------------------------------------------|
| 2007 Act | Planning and Development Act 2007 |
| ACAT | ACT Civil and Administrative Tribunal |
| ACT | Australian Capital Territory |
| ACTCOSS | ACT Council of Social Service |
| ACTPLA | ACT Planning and Land Authority |
| AFI | Advocacy for Inclusion |
| ALRC | Australian Law Reform Commission |
| Assembly | ACT Legislative Assembly |
| Bill | Planning Bill 2022 |
| CAO | Controlled Activity Order |
| CEO | Chief Executive Officer |
| CI | clause |
| CO ₂ | Carbon Dioxide |
| The Climate Change Strategy | ACT Climate Change Strategy 2019–25 Summary |
| Committee | Standing Committee on Planning, Transport and City Services |
| Conservator | ACT Conservator of Flora and Fauna |
| COVID-19 | Coronavirus Disease 2019, caused by the novel coronavirus SARS-CoV-2 |
| Cth | Commonwealth |
| DA | Development Application |
| DRP | National Capital Design Review Panel |
| EIS | Environmental Impact Statement |
| ESD | Environmentally Sustainable Development |
| ESO | Environmental Significance Opinion |
| EPBC Act | Environment Protection and Biodiversity Conservation Act 1999 (Cth) |
| EPSDD | Environment, Planning and Sustainable Development Directorate |
| Explanatory Statement | The Explanatory Statement accompanying the Bill |
| Minister | Minister for Planning and Land Management |
| MLA | Member of the Legislative Assembly |
| NC Act | Nature Conservation Act 2014 |
| NCA | National Capital Authority |
| NCDRP | National Capital Design Review Panel |

| | |
|--------------------|---------------------------------------------------------------------------|
| Para | paragraph |
| PIA ACT | Planning Institute of Australia (ACT Division) |
| Policy Paper | ACT Government Planning Bill Policy Overview Paper |
| QON | Question on Notice |
| QTON | Question Taken on Notice |
| Scrutiny Committee | Standing Committee on Justice and Community Safety (Legislative Scrutiny) |
| Scrutiny Report | Scrutiny Report No. 21 |
| Subcl | subclause |
| Subpara | subparagraph |
| Review | ACT Planning System Review and Reform Project |
| TPA | Territory Planning Authority |
| TPP | Territory Priority Project |

Legislation terminology

A bill proposing new, stand-alone legislation (as opposed to amendment bills) contains ‘clauses’, ‘subclauses’, ‘paragraphs’, and ‘subparagraphs’. In footnotes, these are abbreviated to ‘cl’, ‘subcl’, ‘para’ and ‘subpara’.

Upon enactment, clauses and subclauses become ‘sections’ and ‘subsections’. In footnotes, these are abbreviated to ‘s’ and ‘subs’.

Recommendations

Recommendation 1

The Committee recommends that the ACT Government amend the Bill to require longer time periods for public consultation on key planning decisions, including:

- For Development Applications, from 15 working days to 20 working days;
- For significant developments, from 25 working days to 40 working days;
- For draft Environmental Impact Statements, from 30 working days to 40 working days; and
- For draft major amendments to the Territory Plan, from 30 working days to 40 working days.

Recommendation 2

The Committee recommends that the ACT Government amend the Bill to include in the 'principles of good consultation' that:

- consultation must be well-informed;
- community and developers must be consulted early in the process;
- views must be taken into account; and
- relevant people, including those in nearby affected areas, are directly approached and not only approached via a general public call.

Recommendation 3

The Committee recommends that the ACT Government publish explicit and detailed reasons in a listening report or consultation report as to why the recommendations that were made by those who submitted to the government consultation were not actioned in the Bill, Territory Plan, or District Strategy. This should be an ongoing practice, and accordingly, the proposed Territory Planning Authority should consider and respond to community and stakeholder feedback on Territory Plan variations.

Recommendation 4

The Committee recommends that the ACT Government provide hypothetical examples of planning decisions and outcomes during the consultation and workshop these to demonstrate how this new system works and how it differs from the current system.

Recommendation 5

The Committee recommends that the ACT Government ensure that the Territory Planning Authority's website is accessible and make explicit the ability for members of the public to access information in-person at Access Canberra, as well as ensuring the same information is available to people with no internet access, at no additional cost.

Recommendation 6

The Committee recommends that the ACT Government amend the Bill to include a requirement that, for significant developments, the proponents undertake consultation early in the development process and prior to the Development Application consultation process.

Recommendation 7

The Committee recommends that the ACT Government include in the requirement for consultation early in the development process that the consultation be in accordance with the principles of good consultation and that proponents demonstrate how the proponent has incorporated community feedback into the development proposal as proposed in the Development Application.

Recommendation 8

The Committee recommends that the ACT Government consider implementing a threshold on how many corrections a proponent can make to a Development Applications, especially when an amendment to a Development Application is a substantial to the design and requires further consultation.

Recommendation 9

The Committee recommends that the ACT Government provides a consistent touchpoint on cases for Development Applications such as through a system or case manager, to ensure all inquiries are handled properly and in a well-informed manner for proponents and stakeholders.

Recommendation 10

The Committee recommends that the ACT Government introduce amendments to the Bill to provide clearer penalties to act as a deterrent for 'exempt development' that is not in fact exempt.

Recommendation 11

The Committee recommends that the ACT Government review the current arrangement whereby the role of the Chief Planner and the role of the Director-General of EPSDD are held by the same person, to see whether better governance and potentially better outcomes could be achieved by separating those roles.

Recommendation 12

The Committee recommends that the ACT Government review governance and administrative arrangements to ensure that entities and individuals that are intended to provide frank, fearless and independent planning advice to the Chief Planner, can do so.

Recommendation 13

The Committee recommends that the ACT Government amend clause 47 of the Bill to ensure that the Territory Plan must give effect to relevant outcomes related to planning contained in other government strategies and policies.

Recommendation 14

The Committee recommends that the ACT Government amend clause 187 of the Bill to ensure that when making decisions contrary to entity advice, the Bill:

- provides criteria as to what would 'provide a substantial public benefit';
- requires the decision-maker to publish reasons for the decisions; and

- sets clear limits on the decision-maker to override the ACT Conservator of Flora and Fauna's advice.

Recommendation 15

The Committee recommends that the ACT Government ensure the Minister refer all major Territory Plan variations to the relevant Assembly Committee, and the Committee have 20 business days to decide whether to inquire, as per current provisions in the *Planning and Development Act 2007*.

If a shorter timeframe is required, then the Minister, when tabling the major Territory Plan variation, should request the relevant Assembly Committee to consider a shorter time period and provide reasons as to why urgency is needed.

Recommendation 16

The Committee recommends that the ACT Government explore opportunities to employ an independent professional body of experts who can feed into the decision-making process when overriding entity advice under clause 187 of the Bill.

Recommendation 17

The Committee recommends that the ACT Government review the timeline in the Bill that allows 10 days for the Federal Minister for Environment to respond to ensure that this timeline matches the Federal Minister's practices and if not, that this timeline be reviewed.

Recommendation 18

The Committee recommends that the ACT Government provide sufficient links, in the legislation, between the objects of the Bill and decisions by decision-makers.

Recommendation 19

The Committee recommends that the ACT Government ensure that people and bodies involved in the administration of the Bill are required to exercise powers and functions and make decisions consistently with the objects of the Bill.

Recommendation 20

The Committee recommends that the ACT Government ensures the Territory Planning Authority has the sufficient staff, upskilling, training, and resourcing to support the new planning system, and that meaningful evaluation of resources is done on an annual basis.

Recommendation 21

The Committee recommends that the ACT Government publish an organisational chart for the Territory Planning Authority.

Recommendation 22

The Committee recommends that the ACT Government undertake a review of the operations of the Bill and the full package of the planning reform within two to three years of commencement.

Recommendation 23

The Committee recommends that the ACT Government consider appropriate resourcing of the ACT Civil and Administrative Tribunal to ensure that it has the capacity, specialist resources and expertise to review decisions under the new planning system.

Recommendation 24

The Committee recommends that the ACT Government amend the Bill to enable any person(s) to retain their rights to access administrative or judicial remedies to enforce a breach, or anticipated breach, of the Bill, and to reinsert the ability for community members to apply for a Controlled Activity Order.

Recommendation 25

The Committee recommends that the ACT Government undertake an independent review of planning decisions and new developments annually, to examine whether they are meeting the Bill's intentions.

Recommendation 26

The Committee recommends that the ACT Government:

- introduce amendments to the Bill to include strong compliance and enforcement mechanisms available for development proposals that are likely to contribute to climate change through greenhouse gas emissions and that are likely to have a significant adverse environmental impact; and
- ensure that after each major development is complete, an inspection is conducted to ensure that its impacts were as expected.

Recommendation 27

The Committee recommends that the ACT Government amend the Bill to ensure that minor and technical variations to the Territory Plan are defined so that they do not include policy decisions, and ensure there are publicly available guidelines about the interpretation of 'minor' or 'technical', and that these are genuinely minor and technical variations.

Recommendation 28

The Committee recommends that the ACT Government amend the Bill to require that significant developments must achieve good planning principles including climate resilience.

Recommendation 29

The Committee recommends that the ACT Government amend the Bill to provide a clearer legislative link to ensure that the Territory Planning Authority ensures the principles of good planning are applied explicitly to planning and scoping documents including Development Applications, developer-led Territory Plan variations, and Environmental Impact Statements.

Recommendation 30

The Committee recommends that the ACT Government amend the Bill to contain a clear provision on housing affordability in principles of good planning.

Recommendation 31

The Committee recommends that the ACT Government amend the Bill to ensure greater clarification is provided to terminology such as ‘planning outcome’, ‘outcomes-focussed’ and ‘good planning outcome’, as well as defining ‘substantial public benefit’ in paragraph 187(2)(ii).

Recommendation 32

The Committee recommends that the ACT Government ensure that the use of terminology referencing community consultation is consistent throughout the Bill.

Recommendation 33

The Committee recommends that the ACT Government amend subclause 215(1) of the Bill to include ‘(d) has undergone sufficient community consultation’.

Recommendation 34

The Committee recommends that the ACT Government consider amending subclause 215(2) of the Bill to ensure that a Territory Priority Project declaration is a disallowable instrument. In making this recommendation, the Committee notes a change of this type could be considered a significant change in planning practice.

Recommendation 35

The Committee recommends that the ACT Government ensure First Nations peoples are meaningfully consulted in the ACT Planning System Review and Reform Project.

Recommendation 36

The Committee recommends that the ACT Government explore training for staff in the Territory Planning Authority and statutory planning team to attend government-funded immersion training and learn how to better work with First Nations people in the ACT and how to view the land as First Nations land; and that Government develop guidelines for consultation with First Nations, which should be culturally safe and developed through consultation with First Nations people and communities.

Recommendation 37

The Committee recommends that the ACT Government amend the objects of the Bill to recognise the cultural and spiritual connections held by First Nations people in the ACT and amend clause 9 to elevate considerations of cultural heritage.

Recommendation 38

The Committee recommends that the ACT Government amend the Bill’s objectives to include reference to protection of biodiversity and climate change.

Recommendation 39

The Committee recommends that the ACT Government amend the objects of the Bill to include climate change and climate resilience so that these are mandatory considerations for all decisions made, and powers and functions exercised, under the Bill.

Recommendation 40

The Committee recommends that the ACT Government amend the Bill to include a clearer and stronger definition of 'ecologically sustainable development', in line with the common national and international definitions as well as the recommendations set out in the Environmental Defenders Office's submission to the draft Bill.

Recommendation 41

The Committee recommends that the ACT Government amend the Bill to reinsert Strategic Environmental Assessments into the Bill, or it be amended to include a trigger to assess listed ACT-threatened species under the *Nature Conservation Act 2014* in parallel with a Strategic Environmental Assessment as required under the *EPBC Act*.

Recommendation 42

The Committee recommends that the ACT Government amend the Bill to include reference to 'cumulative environmental impact' in the planning principles and define 'environmentally sound'.

Recommendation 43

The Committee recommends that the ACT Government amend the Bill to include 'key threatening process' as a trigger for an Environmental Impact Statement in Chapter 6 of the Bill.

Recommendation 44

The Committee recommends that the ACT Government amend the Bill to provide a stronger link to existing environmental legislation such as the *Nature Conservation Act 2014*.

Recommendation 45

The Committee recommends that the ACT Government amend the Bill's definition of 'protected matters' to include matters protected under the *Nature Conservation Act 2014*.

Recommendation 46

The Committee recommends that the ACT Government review offsets policy to ensure it is current and the planning system only allows offsetting in limited circumstances and in line with the best practice science-based principles.

Recommendation 47

The Committee recommends that the ACT Government appoint a Government Landscape Architect to provide advice to the ACT Government and explore the introduction of a landscape policy for the Territory.

Recommendation 48

The Committee recommends that the ACT Government establish a Social Planning Committee or a Social Planning Unit.

Recommendation 49

The Committee recommends that the Assembly consider this report along with additional comments before debating the Planning Bill 2022.

1. Introduction

Background to the Bill

- 1.1. The ACT Government commenced the *ACT Planning System Review and Reform Project* (the Review) in March 2019, to review the existing ACT planning system.¹
- 1.2. This was the first time in 15 years since the enactment of the *Planning and Development Act 2007* (the 2007 Act) where a major review was undertaken on the Territory's planning legislation.²
- 1.3. The review involved key stakeholder and community engagement through surveys and workshops throughout 2020 and 2021, as well as the establishment of the Stakeholder Working Series and Legislation Working Group with industry and community representatives in 2021, to assist with the drafting of a new planning legislation.³
- 1.4. In March 2022, the ACT Government issued a draft Planning Bill for public consultation between 15 March and 15 June 2022.⁴ A total of 329 submissions were received on the draft Planning Bill (including those not submitted through the ACT Government's *YourSay Conversations* portal), consisting of:
 - 210 quick comments;
 - 26 feedback forms;
 - 66 online submissions; and
 - 27 emailed submissions.⁵
- 1.5. Following the consultation process, the *Planning Bill 2022* (the Bill) was presented to the Assembly on 21 September 2022 by the Minister for Planning and Land Management, Mr Mick Gentleman MLA.⁶
- 1.6. The Bill will repeal and replace the existing 2007 Act and will be the first of three key planning reforms to arise from the Review, alongside the introduction of District Strategies and a new Territory Plan.⁷
- 1.7. The new provisions set out in the Bill will be further discussed in **Chapters 2 and 3**.

¹ Planning Bill 2022, *Explanatory Statement*, p 5.

² EPSDD, [ACT Planning System Review and Reform Project](#), (accessed 30 September 2022).

³ ACT Government, [ACT Planning System Review and Reform Project: Planning Bill 2022](#), (accessed 30 September 2022).

⁴ ACT Government, [Draft Planning Bill: Consultation Report September 2022](#), p 6.

⁵ ACT Government, [Draft Planning Bill: Consultation Report September 2022](#), p 8.

⁶ ACT Legislative Assembly, *Minutes of Proceedings*, No 59, 21 September 2022, p 805.

⁷ EPSDD, [The Planning Bill](#), (accessed 30 September 2022).

Conduct of the inquiry

- 1.8. On Wednesday, 21 September 2022, the ACT Legislative Assembly referred the Planning Bill 2022 to the Standing Committee on Planning, Transport and City Services (the Committee) for inquiry. After the Committee resolved to undertake an inquiry, the Chair of the Committee moved a motion in the Assembly requesting an extension of time from two months to three months, on the same day:

This is the first stage of a major review of the ACT planning system. Due to a need for wide community consultation on the Bill, and an overlap with the Annual Reports hearing period between 31 October and 11 November, the Committee requests that an extension be granted to review this important piece of legislation.⁸

- 1.9. The extension was granted until Thursday, 22 December 2022.⁹
- 1.10. The Committee issued a call for submissions on 21 September 2022, which closed on 16 November 2022. A total of 65 submissions were received by the Committee. A list of all the submissions is provided at **Appendix A**.
- 1.11. 18 exhibits were received for the inquiry. A list of all exhibits is provided at **Appendix B**.
- 1.12. The Committee held public hearings on 6 and 7 December 2022 and heard from individuals, community and environmental organisations, housing industry groups, residential associations, and the Minister for Planning and Land Management. A list of witnesses who appeared before the Committee is provided at **Appendix C**. The transcripts of proceedings are accessible at https://www.hansard.act.gov.au/Hansard/10th-assembly/Committee-transcripts.htm#6_ptcs.
- 1.13. There were 22 Questions on Notice (QONs) and 11 Questions Taken on Notice (QTONs) from the public hearings. The details of the QONs and QTONs are provided at **Appendix D**.
- 1.14. **Appendix E, F, and G** contain additional comments from the Committee Members.
- 1.15. The Committee met on 19 December 2022, 20 December 2022 and 21 December 2022 to consider the Chair's draft report. The final report was adopted on 21 December 2022, for tabling on 22 December 2022.
- 1.16. In this report, references to Committee Hansard are to proof transcripts of evidence. Page numbers may vary between proof and official transcripts.

⁸ Ms Jo Clay MLA, Chair, Standing Committee on Planning, Transport and City Services, *Hansard*, 21 September 2022, p 2631.

⁹ ACT Legislative Assembly, *Minutes of Proceedings*, No 59, 21 September 2022, p 807.

2. New provisions of the Bill and Legislative Scrutiny

- 2.1. This Chapter will discuss the new provisions set out in the Bill, followed by comments from the Standing Committee on Justice and Community Safety (Legislative Scrutiny) (the Scrutiny Committee).

Chapter 1: Preliminary

- 2.2. Chapter 1 contains administrative provisions for the proposed Bill, including the naming of the Act, once passed, as the Planning Act 2022.¹⁰
- 2.3. Commencement of the Act will occur on two dates:
- Section 38 (District Strategy) and Part 20.3 (Transitional – Territory Plan) will commence on the day after the notification day of the Act; and
 - the remaining provisions will commence on a day fixed by the Minister by written notice.¹¹

Chapter 2: Object, principles, and important concepts

- 2.4. Chapter 2 contains the object of the Bill, along with details for planning principles, consultation principles, and other important concepts.
- 2.5. Clause 8 details the key elements of the proposed Bill. They are as follows:
- (a) the *planning strategy*—setting out the long-term strategic direction and desired future planning outcomes for the Territory;
 - (b) *district strategies*—setting out the strategic direction and desired future planning outcomes for districts;
 - (c) the *territory plan*—setting out the desired planning outcomes, land use zones and development assessment provisions;
 - (d) the *leasing system*—setting out the tenure and use arrangements for land in the ACT;
 - (e) the *development assessment and approval system*—setting out the processes for assessing and deciding development applications and promoting desired planning outcomes for the Territory by—
 - (i) categorising development;
 - (ii) providing the application and assessment requirements for different categories of development;

¹⁰ Planning Bill 2022, Chapter 1.

¹¹ Planning Bill 2022, cl 2.

(iii) providing a process for making, receiving, assessing and deciding development applications;

(iv) establishing rights and responsibilities in relation to development approvals;

(f) *Ministerial powers*—to identify priority development proposals for progressing through the development approval system;

(g) the *compliance and enforcement framework*—which sets out a variety of offences and enforcement arrangements;

(h) *review processes*—for internally and externally reviewing administrative decisions; and

(i) *access to information provisions*—which outline what information is available to the public and how it is accessible.¹²

2.6. In the ACT Government’s *Planning Bill – Policy Overview Paper* (Policy Paper) released in March 2022, it stated that, to highlight the importance of good strategic planning, and the range of planning principles to be considered when undertaking strategic and spatial planning, the Planning Bill proposes to include ‘principles of good planning’.¹³

2.7. The ‘principles of good planning’ are outlined in Part 2.2 of the Bill and are set out in Figure 1 below.



[Figure 1: ACT Government, [Principles of good planning](#), 12 October 2022]

2.8. Development and exempt development provisions are unchanged in the Bill from the 2007 Act – however, the provisions have been reordered to include the term *ecologically sustainable development* into the Bill (expanding on the previous term, *sustainable development*).¹⁴

¹² Planning Bill 2022, cl 8.

¹³ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 13.

¹⁴ Planning Bill 2022, cl 9.

Chapter 3: Territory planning authority and chief planner

- 2.9. Chapter 3 provides for the establishment of an authority called the Territory Planning Authority (TPA). It also provides for the appointment of the Chief Planner as the statutory office holder who performs the functions of the TPA.¹⁵
- 2.10. The Policy Paper has stated that renaming of the TPA has been proposed to delineate the role of the authority in the reformed planning system from the planning and land authority's role in the existing system:

This will provide a clear distinction for the Territory Planning Authority from its predecessor and recognises the expanded role of the authority in seeking better development outcomes and considering development applications from a performance perspective.¹⁶

Chapter 4: Strategic and spatial planning

- 2.11. Chapter 4 contains details for the Planning Strategy, District Strategy, and subdivision design applications.
- 2.12. Section 41 details how the ACT Government will be required to consider whether to review the Planning Strategy, at least once every five years. The Bill sets out that, in deciding whether a review is warranted, the ACT Government must consider whether the strategy continues to reflect the long-term planning policy and goals for the ACT.¹⁷
- 2.13. There will also be a legislative requirement for the ACT Government to undertake public consultation before making a Planning Strategy or District Strategy.¹⁸

District Strategies

- 2.14. According to the Explanatory Statement accompanying the Bill, 'the need for more consideration of planning outcomes at a district-scale has been identified, as the existing Planning Strategy only has a Territory and city-wide focus.'¹⁹ This has led to the creation of District Strategies.
- 2.15. District Strategies are new district-level strategic planning documents proposed for the reformed planning system.²⁰ The Explanatory Statement outlined District Strategies as:

...a continuation of strategic and spatial planning (expressed through the Planning Strategy) at the district-level but looking at the same long-term timeframe. District Strategies will contain the long-term planning policy and goals for a district and must be consistent with the Planning Strategy.²¹

¹⁵ Planning Bill 2022, cl 16.

¹⁶ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 16.

¹⁷ Planning Bill 2022, cl 41.

¹⁸ Planning Bill 2022, subcl 36(3), 38(3).

¹⁹ Planning Bill 2022, *Explanatory Statement*, p 8.

²⁰ ACT Government, [ACT Planning System Review and Reform Project: Planning Bill 2022](#), (accessed 30 September 2022).

²¹ Planning Bill 2022, *Explanatory Statement*, p 8.

- 2.16. District Strategies may also identify areas within a district for future detailed planning, such as planning studies and investigations.²²
- 2.17. The ACT Government has developed draft District Strategies for each of the ACT's nine districts:
- Belconnen;
 - East Canberra;
 - Gungahlin;
 - Inner North and City;
 - Inner South;
 - Molonglo Valley;
 - Tuggeranong;
 - Weston Creek; and
 - Woden.²³
- 2.18. Community engagement on the draft District Strategies (along with the draft Territory Plan) is open from 1 November 2022 to 3 March 2023.²⁴

Chapter 5: Territory plan

- 2.19. Chapter 5 details the establishment, object, key components and effect of the Territory Plan, along with details of major and minor plan amendments and review processes.
- 2.20. Under section 47 of the Bill, the Territory Plan:
- must promote principles of good planning;
 - must give effect to the planning strategy and district strategies; and
 - may give effect to relevant outcomes related to planning contained in other government strategies and policies.²⁵
- 2.21. The Bill will also require the Territory Plan to contain:
- a map (the Territory Plan map) identifying districts and designating land-use zones in the ACT;
 - the policy outcomes to be achieved by the plan;
 - requirements and outcomes against which development proposals are assessed; and
 - provisions that support compliance with requirements for undertaking development.²⁶

²² ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 19.

²³ Planning Bill 2022, *Explanatory Statement*, p 8.

²⁴ ACT Government, [ACT Planning System Review and Reform Project](#), (accessed 20 December 2022).

²⁵ Planning Bill 2022, cl 47.

²⁶ Planning Bill 2022, cl 48.

Amendment processes

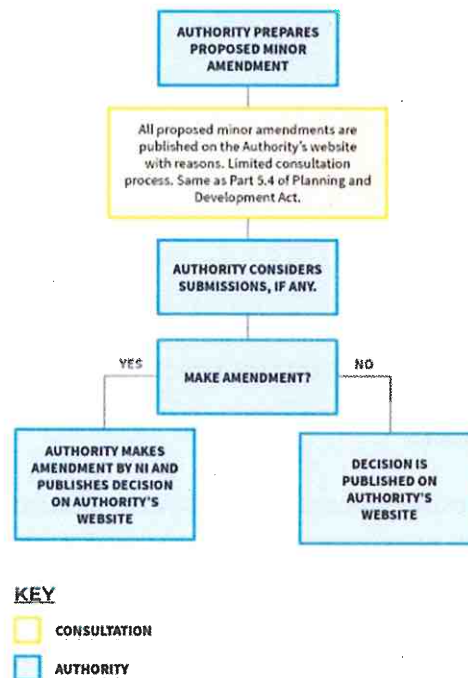
2.22. The proposed Bill provides mechanisms for the Territory Plan to be amended.²⁷ The TPA is responsible for preparing proposed amendments to the Territory Plan.²⁸

Minor plan amendment

2.23. Minor amendments to the Territory Plan are the same as technical amendments under the 2007 Act and are prepared and approved by the TPA following any required consultation.²⁹

2.24. The minor plan amendment process is detailed in Figure 2 below.

MINOR AMENDMENT PROPOSAL



[Figure 2: ACT Government, [Minor amendment proposal](#), 12 October 2022]

Major plan amendment

2.25. Major amendments to the Territory Plan require public and National Capital Authority (NCA) consultation, are approved by the Minister, may be referred to a relevant Assembly committee for consideration, and are subject to Assembly review and disallowance.³⁰

2.26. Major plan amendments start when the TPA prepares a draft major plan amendment:

- on application by an interested person;
- on the TPA's own initiative; or
- in accordance with a direction by the Minister under clause 20.³¹

²⁷ Planning Bill 2022, Parts 5.2, 5.3.

²⁸ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 23.

²⁹ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 23.

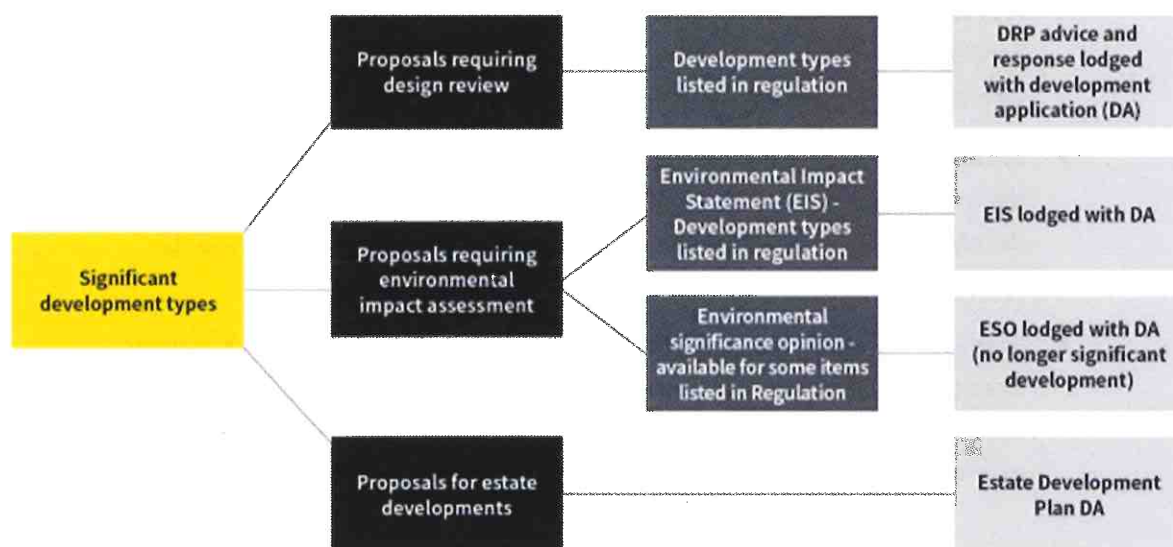
³⁰ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 24.

³¹ Planning Bill 2022, cl 51.

- 2.27. Under the proposed Bill, there is a new process to initiate an amendment to the Territory Plan, called *proponent-initiated amendments*.³²
- 2.28. Under this new process, a proponent seeking to amend the Territory Plan may apply to the TPA with a proposed amendment to Territory Plan.³³ The TPA will then consider whether to accept the proposed amendment for detailed consideration. This two-phase consideration process will allow the TPA at the outset to decline to consider those applications which are clearly contrary to Government policy or where the land in question is subject to ongoing detailed planning.³⁴
- 2.29. Where the TPA accepts a proponent-initiated amendment application, it is the function of the TPA to then prepare a proposed amendment to give effect to the proponent's proposal, undertake necessary public and NCA consultation, and provide the proposed amendment to the Minister for consideration.³⁵

Chapter 6: Significant development

- 2.30. Chapter 6 contains details on significant developments, the Design Review Panel, and environmental impact assessments.
- 2.31. The proposed Bill introduces the concept of *significant developments*. These are a sub-category of assessable developments.³⁶
- 2.32. The types of significant developments and the required documents to be submitted are outlined in Figure 4 below.



[Figure 4: ACT Government, [Significant development types and processes](#), 12 October 2022]

³² Planning Bill 2022, cl 55–57.

³³ Planning Bill 2022, cl 55.

³⁴ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 25.

³⁵ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 25.

³⁶ Planning Bill 2022, cl 92; Planning Bill 2022, *Explanatory Statement*, p 10.

- 2.33. The function of the Design Review Panel (DRP) is to provide design advice to proponents of development proposals.³⁷ It offers the opportunity for peer review of development proposals by independent design professionals with the aim of achieving the best possible outcome for development proposals and public spaces.³⁸
- 2.34. Under subsection 98(1), proponents must consult the DRP in relation to their development proposal prior to submitting a development application (DA).³⁹ Significant developments, such as a proposal for a building with five or more storeys, or a proposal to increase the floorspace of a shop by more than 2,000m² (in particular zones), must be consulted with the DRP.⁴⁰
- 2.35. An environmental impact assessment is required wherever a development proposal may have significant adverse environmental impacts.⁴¹
- 2.36. The Bill will remove the concept of an environmental impact statement exemption, previously possible in the 2007 Act, and omits the ability to apply for an exemption.⁴²

Chapter 7: Development assessment and approvals

- 2.37. Chapter 7 includes several policy changes in relation to the development assessment and approval system, for example:
- Significant developments, such as those that trigger an Environmental Impact Statement (EIS), must meet additional documentation and assessment requirements;⁴³
 - A new requirement for the Deed Manager (that is, the Suburban Land Agency) to provide an endorsement notice for certain development proposals before a development application for the proposal can be lodged;⁴⁴
 - Introduction of a new stage into the development assessment process, called pre-decision advice, which will allow the TPA to provide advice to an applicant for development approval prior to making a formal decision in relation to the application;⁴⁵ and
 - More advice, decisions, and information to be published on the TPA website – examples of what must be published under the Bill include DAs, requests for further information, further information provided, applications to amend a DA, notices extending period of public notification, decisions to waive further entity referral or

³⁷ Planning Bill 2022, cl 94.

³⁸ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 30.

³⁹ Planning Bill 2022, subcl 98(1).

⁴⁰ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 30.

⁴¹ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 30.

⁴² ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 31.

⁴³ Planning Bill 2022, *Explanatory Statement*, p 12.

⁴⁴ Planning Bill 2022, *Explanatory Statement*, pp 12–13.

⁴⁵ Planning Bill 2022, *Explanatory Statement*, p 16.

public notification requirements with reasons, any pre-decision advice, notices of decision, and applications for reconsideration.⁴⁶

Chapter 8: Territory priority projects

- 2.38. Chapter 8 relates to Territory Priority Projects (TPPs). A TPP is defined in the Bill as:
- a) a development proposal declared to be a Territory Priority Project under section 215; or
 - b) a development proposal related to light rail.⁴⁷
- 2.39. The Bill provides for a new power – the Territory Priority Project declaration power. This enables the Minister, together with the Chief Minister, to declare a proposal to be a TPP. This will provide for certain significant projects to proceed through a new pathway.⁴⁸
- 2.40. Once declared, a development proposal must be decided by the Minister. A merits review would not be available and there would be limited time to seek judicial review. When deciding whether to approve or refuse a development application for the proposal, the Minister could depart from the ACT Conservator of Flora and Fauna (the Conservator)'s advice in relation to registered trees, declared sites, and protected matters, in limited circumstances.⁴⁹

Chapter 9: Offsets

- 2.41. Chapter 9 contains details on offsets. Offsets are typically land that is used to help manage the adverse impact of development on threatened species and habitats by providing compensation, often by setting aside additional land as a nature reserve (which then requires ongoing management).⁵⁰
- 2.42. The Australian and ACT Governments are under a bilateral agreement to deliver streamlined assessment for environmental approvals and offsets, under the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (Cth). The Australian Government is currently reviewing the EPBC Act – a final report was released in January 2021, and the Australian Government is considering its response to the review and any legislative changes which may result.⁵¹
- 2.43. Due to this, the offset provisions from the 2007 Act have been retained in the proposed Bill. However, amendments may be required to the ACT's planning legislation in the future, as these provisions may require a review in accordance with any changes made to the EPBC Act.

⁴⁶ Planning Bill 2022, *Explanatory Statement*, p 20.

⁴⁷ Planning Bill 2022, cl 213.

⁴⁸ Planning Bill 2022, *Explanatory Statement*, p 21.

⁴⁹ Planning Bill 2022, *Explanatory Statement*, p 21.

⁵⁰ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 47.

⁵¹ ACT Government, [Planning Bill 2022 – Planning Bill Policy Overview Paper](#), March 2022, p 47.

Chapter 10: Leases and licenses

- 2.44. Chapter 10 has made modest legal policy changes to leases and licenses – however, the bulk of the policy positions underpinning leasing and licensing remain unchanged from the 2007 Act.
- 2.45. The Bill will reshape how the concessional status of leases is to be removed.⁵² Where a DA relates to a proposal to remove the concessional status of a concessional lease, the DA is to be referred to the Minister for consideration and decision in accordance with specific criteria relevant to assessing the public interest.
- 2.46. Further, the use of the land is currently regulated with a degree of inflexibility.⁵³ There are circumstances where land needs to be used for purposes other than the purpose for which it is leased. The Bill will now allow the TPA to authorise, for a short-term period, the use of land for additional purposes where there is a significant public benefit and time criticality.
- 2.47. Recent examples include the need for land to support the public health response to the COVID-19 health emergency and supporting the insurance assessment of thousands of cars following a significant hailstorm affecting the ACT.

Chapter 11: Public land

- 2.48. Public land aspects of the Bill were outside the scope of the Review.⁵⁴ The provisions of the 2007 Act have been retained in this Bill.⁵⁵

Chapter 12: Development offences and controlled activities

- 2.49. Chapter 12 of the Bill, which covers development offences and controlled activities, omits the concept of applications for a Controlled Activity Order (CAO) by members of the public.
- 2.50. Currently, a person may apply to the ACT Planning and Land Authority (ACTPLA) for a CAO to be made where the person thinks another person is conducting a controlled activity. Unlike with the complaints process, ACTPLA has no discretion to dismiss the application on the basis it is frivolous or vexatious. The Bill proposes that the TPA have discretion on whether or not to grant a CAO.
- 2.51. Further, a new example for complaints surrounding the impact on amenity due to litter has been included in the Bill. The *Litter Act 2004* purports to regulate amenity including on open private places and other legislation regulates overgrown vegetation, with the ACT Emergency Services Agency responsible for fire risk. Unclean leases under the Bill would be regulated within this provision.⁵⁶

⁵² Planning Bill 2022, *Explanatory Statement*, pp 22–23.

⁵³ Planning Bill 2022, *Explanatory Statement*, pp 22–23.

⁵⁴ Planning Bill 2022, *Explanatory Statement*, p 23.

⁵⁵ Planning Bill 2022, *Explanatory Statement*, p 100.

⁵⁶ Planning Bill 2022, *Explanatory Statement*, p 24.

Chapter 13: Enforcement

- 2.52. Chapter 13 sets out the provisions enabling enforcement to be undertaken. The provisions of the 2007 Act have been retained in this Bill.⁵⁷

Chapter 14: Access to information

- 2.53. Chapter 14 has been created to consolidate all provisions relating to accessing information on the new planning system. The main element of this chapter is the public register, which will be retained as an essential feature, with additional information and accessibility.⁵⁸
- 2.54. Exemption declaration documentation will be added to the public register as an increased transparency measure and the Bill will continue to require certain DA information and documents on the public register to be publicly available on the TPA website.⁵⁹
- 2.55. This will mean that plans submitted to the TPA, along with the TPA's decisions, will be publicly available without the need for a request for documents under the *Freedom of Information Act 2016*.⁶⁰

Chapter 15: Notification and review of decisions

- 2.56. Chapter 15 of the Bill retains provisions for review and identifying reviewable decisions and the persons who may seek review.
- 2.57. The categories of reviewable decision that are exempt from review are now in the primary legislation itself, rather than by regulation made under the Bill.⁶¹
- 2.58. Developments in the city centre, a town centre, industrial zone, or Kingston foreshore will continue to be exempt. Developments in other non-residential zones will be exempt where a set of criteria are met.⁶²

Chapter 16: Miscellaneous

- 2.59. No policy changes have been proposed in Chapter 16 and provisions set out in the 2007 Act have been retained in this Bill. There will be minor amendments such as provisions being relocated to another chapter of the Bill (e.g., Chapter 14: Access to information) and provisions being relocated from another chapter of the Bill (e.g., provisions for the custodianship map).⁶³

Chapter 20: Transitional provisions

- 2.60. Chapter 20 provides for transitional provisions, which will enable a transition from the existing 2007 Act to the new Bill.

⁵⁷ Planning Bill 2022, *Explanatory Statement*, p 110.

⁵⁸ Planning Bill 2022, cl 494.

⁵⁹ Planning Bill 2022, *Explanatory Statement*, p 24.

⁶⁰ Planning Bill 2022, *Explanatory Statement*, p 24.

⁶¹ Planning Bill 2022, cl 500.

⁶² Planning Bill 2022, cl 500.

⁶³ Planning Bill 2022, *Explanatory Statement*, p 117.

Comments from the Scrutiny Committee

2.61. In relation to the new provisions proposed in the Bill, the Scrutiny Committee stated in *Scrutiny Report No. 21*⁶⁴ (the Scrutiny Report) that:

The Bill places restrictions on review rights, including judicial and administrative review, as well as limiting procedural fairness rights.⁶⁵

2.62. The Scrutiny Report raised concerns on several provisions of the proposed Bill, which may:

- limit rights and liberties under the *Human Rights Act 2004*;
- displace the *Legislation Act 2001*; and
- allow for a form of 'Henry VIII clause'.

2.63. Matters raised in the Scrutiny Report in relation to the new provisions are discussed in the sections below.

Human Rights Act 2004

Territory Plan and Territory Priority Projects

2.64. Chapter 5 of the Bill provides for the development and amendment of the Territory Plan. Proposed major amendments to the plan must go through a process of consultation and must also be considered by the relevant Assembly committee.⁶⁶ Proposed major amendments to the plan must also be presented to the Assembly, where the Assembly may, by resolution, reject a major plan amendment or a provision of the major plan amendment.⁶⁷

2.65. Transitional provisions in Part 20.3 also contain requirements in relation to the preparation of a draft Territory Plan within six months of commencement.⁶⁸

2.66. However, the Scrutiny Report noted that clause 80 of the proposed Bill limits any challenge to the validity of a provision of the Territory Plan, as subclause 80(1) states that:

The validity of a provision of the Territory Plan must not be questioned in any legal proceeding other than a proceeding begun not later than three months after the day the provision, or an amendment of the provision, commenced.⁶⁹

2.67. The Scrutiny Committee is of the view that there may be some uncertainty over the constitutional validity of imposing strict time limits such as these, without the scope for judicial discretion, on the ability to challenge the validity of decisions made under the Bill.⁷⁰

⁶⁴ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022.

⁶⁵ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 9.

⁶⁶ Planning Bill 2022, Divisions 5.2.3–5.2.5.

⁶⁷ Planning Bill 2022, cl 76.

⁶⁸ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 9.

⁶⁹ Planning Bill 2022, subcl 80(1).

⁷⁰ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 10.

- 2.68. Likewise, Chapter 8 of the Bill provides for Territory Priority Projects (TPP). TPPs include developments related to light rail, or projects jointly declared by the Chief Minister and Minister on the basis that they will provide ‘significant benefit to the people of the ACT or substantially facilitate planning outcomes.’⁷¹
- 2.69. The Scrutiny Report noted that under clause 216, any proceeding in a court in relation to a decision to make a TPP declaration must be brought within two months after notification of the declaration.⁷² A declaration for a TPP is a notifiable instrument under the proposed Bill.⁷³
- 2.70. Questioning the validity of provisions in a Territory Plan inserted for a TPP, and proceedings in relation to decisions relating to environmental impact assessments, development assessments, as well as approvals, leases, and licences which relate to a TPP, will also have to be commenced within two months.⁷⁴
- 2.71. The Explanatory Statement accompanying the Bill has recognised that these time limitations on any challenge to the validity of provisions of the Territory Plan and court proceedings relating to TPPs may limit the right to a fair trial protected under section 21 of the *Human Rights Act 2004*.⁷⁵
- 2.72. Having recognised that imposing a time limitation on challenges may limit procedural fairness rights, the Explanatory Statement’s justification was that:
- Reducing the number of potential reviews on these development decisions will maximise efficient decision-making in the context of low-risk developments and where the ACT Government seeks to undertake significant development that contributes to planning outcomes and provides benefits to the ACT, in a timely manner.⁷⁶
- 2.73. However, the Scrutiny Committee stated that it is unclear why some residual discretion should not be provided for the court to accept challenges to the validity of these decisions in appropriate circumstances, taking into account the need for timeliness and finality in the making of planning decisions.⁷⁷
- 2.74. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has requested further information from the Minister prior to the Bill being debated.⁷⁸

⁷¹ Planning Bill 2022, subcl 215(1).

⁷² Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 10.

⁷³ Planning Bill 2022, subcl 215(2).

⁷⁴ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 10.

⁷⁵ Planning Bill 2022, *Explanatory Statement*, pp 34–35.

⁷⁶ Planning Bill 2022, *Explanatory Statement*, p 36.

⁷⁷ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 10.

⁷⁸ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, pp 10–11.

Rectification work and prohibition notices

- 2.75. Proposed Part 12.4 of the Bill will allow the TPA to direct the lessee or occupier to undertake work to rectify the effects of controlled activities.⁷⁹
- 2.76. Where the work is not completed within the period set out in the notice, which can be as short as five working days, the TPA may authorise someone else to undertake the work with reasonable costs of the work to be paid as a debt to the Territory.⁸⁰
- 2.77. Contravening a direction will also be a strict liability offence with a maximum penalty of 60 penalty units.⁸¹ There is no requirement to give notice of either the issue of a rectification direction, nor authorising a person to enter premises and undertake uncompleted rectification work.⁸²
- 2.78. Proposed Part 12.5 of the Bill will allow the TPA to issue a prohibition notice preventing an entity from starting or continuing development which is prohibited, requires development approval, or does not comply with conditions of approval.⁸³
- 2.79. There are strict liability offences with a maximum penalty of 60 penalty units for breaching a prohibition order, and the TPA is not required to provide notice of its intention to give a prohibition notice.⁸⁴
- 2.80. According to the Scrutiny Report, this will impact on procedural fairness rights:
- By not requiring notice of an intention to issue a direction, authorisation, or notice, the Bill may be limiting the procedural fairness of those affected protected as part of the right to a fair trial in section 21 of the *Human Rights Act 2004*.⁸⁵
- 2.81. The Explanatory Statement accompanying the Bill does not provide justification for why providing notice may not be appropriate in some circumstances.⁸⁶
- 2.82. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has requested further information from the Minister prior to the Bill being debated.⁸⁷

⁷⁹ Planning Bill 2022, Part 12.4.

⁸⁰ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 11.

⁸¹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 11.

⁸² Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 11.

⁸³ Planning Bill 2022, Part 12.5.

⁸⁴ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 12.

⁸⁵ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 12.

⁸⁶ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 12.

⁸⁷ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 12.

Legislation Act 2001

- 2.83. Clause 48 of the Bill will allow a Territory Plan to apply, adopt, or incorporate a law of another jurisdiction or an instrument as in-force from time to time, unless the Territory Plan provides otherwise.⁸⁸
- 2.84. This results in the disapplication of subsection 47(6) of the *Legislation Act 2001*, resulting in any instrument so incorporated not having to be made available on the ACT Legislation Register as a notifiable instrument.⁸⁹
- 2.85. The Explanatory Statement accompanying the Bill outlined the displacement as:
- ...necessary as the instruments issued under this section are regularly updated and it's not appropriate to notify the instruments and all accompanying amendments on the ACT Legislation Register.⁹⁰
- 2.86. In response, the Scrutiny Report stated that it is not clear why it is considered not appropriate to notify these and other incorporated instruments and all accompanying amendments on the ACT Legislation Register:⁹¹
- ...if anything their regular updating would increase the need to notify current versions and maintain the availability of previous versions and when they were applicable.⁹²
- 2.87. The Scrutiny Report also acknowledged that copyright may prevent the notification of some instruments. However, the Scrutiny Committee is of the view that copyright concerns may not apply to all instruments which may be incorporated under future regulations and hence would not justify the displacement of subsection 47(6) for all such instruments.⁹³
- 2.88. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has requested further information from the Minister prior to the Bill being debated.⁹⁴

Henry VIII clause

- 2.89. The Scrutiny Report raised concerns that Chapter 20 of the proposed Bill includes 47 provisions dealing with transitional matters, and as these provisions allow for

⁸⁸ Planning Bill 2022, subcl 48(3).

⁸⁹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 14.

⁹⁰ Planning Bill 2022, *Explanatory Statement*, p 54.

⁹¹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 15.

⁹² Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 15.

⁹³ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 15.

⁹⁴ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, pp 15–16.

regulations to modify primary legislation and other Territory laws, they are a ‘Henry VIII clause’.⁹⁵

- 2.90. A ‘Henry VIII clause’ is a provision in an Act that allows for delegated laws to amend an Act of Parliament.⁹⁶ As a ‘Henry VIII clause’ allows for delegated legislation to amend the primary legislation, such clauses detract from the legislative power of the Legislative Assembly.⁹⁷
- 2.91. The Explanatory Statement accompanying the Bill acknowledges that ‘the transitional provisions in this Act will enable the making of regulations which may modify this Act – a form of Henry VIII clause’ and that ‘these clauses are generally not preferable.’⁹⁸
- 2.92. However, the Explanatory Statement stated that the provisions were ‘necessary’:
- In developing this Act, every attempt has been made to foresee issues arising in the transition. However, it is considered that this provision is necessary in this Bill as there is no practical alternative available to ensure that any unforeseen matters which might arise during the implementation of this Act’s provisions can be addressed expediently. This power is limited by time and is confined to the purpose of supporting the enactment of this Act.⁹⁹
- 2.93. The Scrutiny Committee is of the view that, given the scope of the Bill and the transition provisions already included, it is unclear why it would be necessary, or appropriate, to widen the Act’s purpose to provide for measures not strictly ancillary to its operation.¹⁰⁰
- 2.94. The Scrutiny Committee also noted that a transitional chapter, and consequently any amendments through regulation to that chapter, is due to expire in three years. However, as part of the transitional chapter, the period of expiry and subsequent effect of any amendments may itself be amended through regulations.¹⁰¹
- 2.95. The Scrutiny Committee has drawn this matter to the attention of the Assembly and has requested further information from the Minister prior to the Bill being debated.¹⁰²

⁹⁵ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, pp 12–13.

⁹⁶ Australian Law Reform Commission (ALRC), [Traditional Rights And Freedoms—Encroachments By Commonwealth Laws \(ALRC Interim Report 127\), Chapter 16: Delegating Legislative Power](#), 3 August 2015, p 442.

⁹⁷ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Henry VIII clauses](#), November 2011, p 3.

⁹⁸ Planning Bill 2022, *Explanatory Statement*, p 119.

⁹⁹ Planning Bill 2022, *Explanatory Statement*, p 119.

¹⁰⁰ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 13.

¹⁰¹ Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, p 13.

¹⁰² Standing Committee on Justice and Community Safety (Legislative Scrutiny), [Scrutiny Report No. 21](#), 4 October 2022, pp 13–14.

3. Issues raised in evidence

- 3.1. This Chapter sets out the issues raised on the Bill in evidence received by the Committee in submissions and at the public hearing. While stakeholder feedback addressed various aspects of the Bill, most of the commentary centred on the following key matters:
- Government consultation and community engagement;
 - Access to and disclosure of information;
 - Developments and Development Applications;
 - Governance and accountability;
 - Reviews and audits;
 - Legislation amendments;
 - Territory Planning Authority and Territory Priority Projects;
 - Recognition of First Nations people;
 - Environmental provisions; and
 - Establishment of new bodies.
- 3.2. These issues are examined in further detail below, along with the Committee’s views and recommendations.
- 3.3. Due to the chronology of events,¹⁰³ the evidence the Committee received relates largely to the provisions of the Bill as they were referred to the Committee by the Assembly on 21 September 2022.

Support for the Bill

- 3.4. A number of witnesses and submissions gave their support for the Bill or welcomed the introduction of certain provisions to the Bill.¹⁰⁴
- 3.5. During the public hearing, Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, told the Committee that they ‘support this Bill proceeding’:¹⁰⁵

¹⁰³ Note: The ACT Government released the draft Territory Plan and a series of District Strategies for community consultation as part of its Planning System Review and Reform Project on 1 November 2022.

¹⁰⁴ See, for example: Master Builders Association of the ACT, *Submission 2*, p 1; Margaret Henderson, *Submission 15*, p 1; Bruce Paine, *Submission 29*, p 1; Planning Institute of Australia (ACT Division), *Submission 39*, p 1; Australian Conservation Alliance, *Submission 41*, p 1; Advocacy for Inclusion, *Submission 52*, p 3; Property Council of Australia (ACT Division), *Submission 58*, p 11; ACT Law Society, *Submission 62*, p 2; ACT Council of Social Service, *Submission 63*, p 2; Canberra Ornithologists Group, *Submission 64*, p 1.

¹⁰⁵ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 21.

Our position is that we support the bill, as amended, and recommend that it be moved forward because, on balance, this is a step forward in the overall planning reform process for the ACT.¹⁰⁶

- 3.6. In its submission, the Property Council of Australia (ACT Division) also supported the overall intention of the Bill:

We generally support the intention of the Planning Bill and the other associated planning reforms that are progressing. We note amendments have been made to the Bill since the consultation period and view those changes as positive. The Bill will contribute towards achieving the outcomes-focused planning system.¹⁰⁷

- 3.7. The Planning Institute of Australia (ACT Division) also shared similar views in relation to the strategic planning aspects of the Bill:

PIA ACT has long-advocated for a stronger strategic planning process, a climate-conscious planning system and policies that encourage high-quality design. We strongly support these aspects of the Planning Bill.¹⁰⁸

Concerns for the Bill

Government consultation and community engagement

Need for genuine consultation

- 3.8. Mr Peter Elford, Treasurer, Gungahlin Community Council noted before the Committee that members of the Environmental Planning Forum had been asked to contribute some ideas on what good consultation would look like; however, some of these were not included:

...discussions must be well informed. Both the community and the government must be early in the process, views must be taken into account, and the government, the planning authority, should actually approach the relevant impacted people and organisations, rather than simply putting out a public call.¹⁰⁹

- 3.9. Similarly, Richard Johnston noted in his submission that the Bill's principles of good consultation are not focused on consultation with the community affected by a development proposal, but instead are about broader forms of consultation.¹¹⁰
- 3.10. Several other submissions reinforced the importance of these principles.
- 3.11. For example, the Planning Institute of Australia (ACT Division) noted in their submission the importance of early community consultation and involvement:

¹⁰⁶ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, pp 25–26.

¹⁰⁷ Property Council of Australia (ACT Division), *Submission 58*, p 11.

¹⁰⁸ Planning Institute of Australia (ACT Division), *Submission 39*, p 2.

¹⁰⁹ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2022, pp 71–72.

¹¹⁰ Richard Johnston, *Submission 6*, p 5.

Without early community participation in the development process, people are more likely to feel that development is set in stone, that their involvement is tokenistic, and that little opportunity for change will occur, other than through appealing the decision.¹¹¹

- 3.12. Similarly, Mr Gordon Lowe, Head of Planning, Molonglo noted the importance of genuine consultation:

It [consultation] is too often a conflict type of process where someone will formulate a proposal or a plan and then consult with the community with: “Here is our plan. How does it impact on your interests? Yes or no. Give us some feedback.” It sets up a process of dispute right from the word go.

We actually prefer to the term of engagement with the community, and early engagement or participation in the planning process is what we try and achieve. That means conversations at a very, very early stage that help inform what this place could be and how we could meet the aspirations of the broadest range of people. That sounds easy but it is actually quite difficult. It requires a great deal of investment up front and time and money and skills, but it pays its dividends when you get to the pointy end of the development process. In particular, it pays its dividends if you have done that participatory process properly. Our objective is for others to judge, but our objective is actually to earn the trust of the communities and the neighbours of the communities that we are dealing with.¹¹²

- 3.13. At the public hearing, Mr Bill Gemmell, Chair, Weston Creek Community Council argued that good consultation reduces disputes:

Where I am coming from is that the community likes to feel like they have been engaged, and that will reduce disputation. That goes on in every bit of administration, not just planning: get the community in, get them engaged, empower them and also create the expectation that they are not always going to get their way.

The current system is very combative, and it is about knocking each other down. We need to somehow meet in the middle and get some compromise—coming from me who does not like compromising much, that is great to say—and get people to compromise on these things.¹¹³

Consultation periods

- 3.14. The Environmental Defenders Office expressed concerns that the consultation periods in the Bill for key planning decisions are not long enough.¹¹⁴ They stated that the ACT Government did not amend the Bill in line with their recommendations in June, which were as follows:

¹¹¹ Planning Institute of Australia (ACT Division), *Submission 39*, p 13.

¹¹² Mr Gordon Lowe, Head of Planning, Molonglo, *Committee Hansard*, 6 December 2022, p 29.

¹¹³ Mr Bill Gemmell, Chair, Weston Creek Community Council, *Committee Hansard*, 6 December 2022, p 59.

¹¹⁴ Environmental Defenders Office, *Submission 9*, p 9.

We submit that the public consultation period for key planning decisions should be extended as follows, consistent with the Office of Best Practice Regulation's recommendations:

- development applications should be extended from 15 working days to 20 working days;
- development applications for proposals that are significant development should be extended from 25 working days to 40 working days;
- draft EISs should be extended from 30 working days to 40 working days;
- draft major amendments to the Territory Plan should be extended from 30 working days to 40 working days.¹¹⁵

3.15. The Office of Best Practice Regulation also note in their *Best Practice Consultation* guide that consultation should be 'not burdensome', adding:

Remember that many people you wish to consult have full-time jobs or business commitments. This is especially so for small business proprietors. It is important not to make unreasonable demands of people you wish to consult or assume that they have unlimited time to devote to your consultation process.

Timeframes for consultation should be realistic to allow stakeholders enough time to provide a considered response. Avoid holiday periods and the end of the financial year, particularly where stakeholders are small businesses and individuals. The time required will depend on the specifics of the proposal (for example, the diversity of interested parties or the complexity of the issue). However, if it is necessary to consider a proposal promptly, some limitations on the timing and length of consultation may be unavoidable.

Be aware of the burden that the government as a whole may be placing on stakeholder groups. If your stakeholders are the subject of frequent consultation efforts, try consulting jointly with other agencies to minimise the burden on them.¹¹⁶

3.16. The Office of Best Practice Regulation also add that consultation should be 'not rushed', with 'Depending on the significance of the proposal, between 30 to 60 days is usually appropriate for effective consultation, with 30 days considered the minimum. Longer consultation periods may be necessary when they fall around holiday periods'.¹¹⁷

3.17. The Conservation Council ACT Region noted in their submission with respect to the consultation period for Environmental Impact Statements (at least 20 working days) that:

¹¹⁵ Environmental Defenders Office, *Submission 9.1*, p 50.

¹¹⁶ Office of Best Practice Regulation, *Best practice consultation*, (accessed 17 December 2022), https://www.pmc.gov.au/sites/default/files/publications/best-practice-consultation_0.pdf

¹¹⁷ Office of Best Practice Regulation, *Best Practice Consultation*, (accessed 17 December 2022), https://www.pmc.gov.au/sites/default/files/publications/best-practice-consultation_0.pdf

It is not appropriate that an EIS consultation period should be shorter than a consultation on a major plan amendment. The quantity and nature of the material that is in an EIS can be extensive and at times technically complex, and require significant time to investigate and understand. Currently the minimum consultation period for an EIS is the same as for a minor amendment, something that is likely to be much less complex by definition, and for which the consultation period is even defined as “*limited consultation*”. This is effectively an acknowledgement that the consultation period for an EIS is also a limited consultation.¹¹⁸

- 3.18. In their submission, Ian Hubbard also commented on notification and consultation periods being ‘not adequate’:

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.¹¹⁹

- 3.19. Another submitter also noted the importance of longer periods for consultation in the Bill, particularly if pre-DA consultation is not included in the Bill.¹²⁰
- 3.20. The Committee is of the view that the consultation periods in the Bill are inadequate for members of the community, and should be amended to be a longer timeframe. This will ensure the public has the opportunity to participate and interested parties who are likely to be affected by the proposed legislation or amendments are able to have their say.

¹¹⁸ Conservation Council ACT Region, *Submission 23*, p 18.

¹¹⁹ Ian Hubbard, *Submission 51*, pp 3–4.

¹²⁰ Name withheld, *Submission 61*, p 9.

Recommendation 1

The Committee recommends that the ACT Government amend the Bill to require longer time periods for public consultation on key planning decisions, including:

- For Development Applications, from 15 working days to 20 working days;
- For significant developments, from 25 working days to 40 working days;
- For draft Environmental Impact Statements, from 30 working days to 40 working days; and
- For draft major amendments to the Territory Plan, from 30 working days to 40 working days.

Responses to participants

- 3.21. Witnesses were concerned about the lack of clear and full reasons provided by the ACT Government after consulting with the community, often leading them to feel their views were ignored, or that consultation was tokenistic.
- 3.22. Ginninderra Falls Association noted a lack of detail in past consultation reports:
- The consultation report simply indicates whether an opinion on a matter was accepted or rejected. This does not give a clear understanding of what the people want. What is important is the number of respondents who are for or against a proposal, which should be shown in the consultation report.¹²¹
- 3.23. Mr Peter Johns, Committee member, Planning Institute of Australia (ACT Division) similarly noted that consultation reports did not engage with the contributions:
- [T]he thing the community would expect would be a full report, which would show what issues were raised, and a response that would really address why they chose to adopt an approach and the reasons for that—so that people can see that their voices were heard and that there was a good and reasoned response provided.¹²²
- 3.24. The Committee is of the view that there is a clear benefit to early engagement in the consultation process, and that genuine consultation includes feedback to all participants.
- 3.25. The Committee recognises that not all sectors of the population have the ability to engage equitably in consultation, and considers that the ACT Government should make efforts to ensure that the voices of younger people, those with a diversity of needs, renters, and marginalised communities are specifically included.

¹²¹ Ginninderra Falls Association, *Submission 4*, p 1.

¹²² Mr Peter Johns, Committee member, Planning Institute of Australia (ACT Division), *Committee Hansard*, 6 December 2022, pp 14–15.

Recommendation 2

The Committee recommends that the ACT Government amend the Bill to include in the 'principles of good consultation' that:

- consultation must be well-informed;
- community and developers must be consulted early in the process;
- views must be taken into account; and
- relevant people, including those in nearby affected areas, are directly approached and not only approached via a general public call.

Lack of impact

- 3.26. There were also concerns raised in submissions in relation to the ACT Government's process of consultation for the Bill (as well as the supporting Territory Plan and District Strategy).
- 3.27. Richard Johnston noted in his submission that as part of its consultation program on the Planning System Review and Reform Project, the ACTPLA ran four stakeholder meetings, from which the listening report identified three key feedback themes:
- a) 'Confidence, certainty and clarity', in which 'Clear rules and processes are preferred';
 - b) 'Trust and transparency', in which transparency across the planning system, including decision making, was a priority; and
 - c) Consultation.¹²³
- 3.28. Mr Johnston argued however that the ACT Government 'produced a Draft Planning Bill which totally failed to respond to those concerns of the community and other "stakeholder" groups. It was as though the people in charge of the "consultation" and the drafters of the Bill occupied different parallel universes'.¹²⁴
- 3.29. Mr Johnston also commented on the lack of responses to submissions in the ACT Government's consultation paper, and the few changes made to the Bill.¹²⁵
- 3.30. This was echoed by several others¹²⁶, who noted their disappointment at the lack of responses to recommendations from members of the public:

As I said in my paper, consultation must actually be accountable. So, if you are making a comment, not just saying "noted" or talking about what is going to happen or saying "not agreed", say why it is not agreed. If people get value from

¹²³ Richard Johnston, *Submission 6*, p 3.

¹²⁴ Richard Johnston, *Submission 6*, p 3.

¹²⁵ Richard Johnston, *Submission 6*, p 3.

¹²⁶ See, for example: Margaret Dudley, *Submission 44*, p 1; Name withheld, *Submission 61*, pp 8-17; Ms Frances Bradshaw, Senior Solicitor, Environmental Defenders Office, *Committee Hansard*, 7 December 2022, p 130.

their comments, they are then encouraged to make them. But, if they just disappear into the ether, it is a very disappointing exercise and a waste of time.¹²⁷

3.31. The Minister for Planning and Land Management, Mr Mick Gentleman MLA, noted in response to a Question on Notice on why detailed reasons weren't provided where recommendations were rejected:

All 'Recommendations' within the 329 submissions were considered in detail. None were 'rejected'. They were grouped by theme and appropriately responded to in the following categories to reflect the Government's position:

- Agreed – change made to Bill (this is self-explanatory – the comment is agreed, and a change has been made as a result of feedback);
- Agreed in principle – change made to Bill (this is where the principle of the feedback is agreed and that an amendment to something potentially already in the Bill has been made or that a change that is considered to retain the core principles of the Bill but also capture the principle of the feedback is made);
- Agreed in principle – no change required (this is where it is considered that the principle of the comments might already be reflected in the Bill or that elements of the comments might be agreed but it is considered no change is required to the Bill);
- Not agreed / outside of scope (this is where the comments are not agreed and not considered to align with the purpose, principles and role of the Bill and therefore outside scope of the Bill);
- Noted (this is where comments are neither agreed or not agreed; comments might relate to matters that are not relevant to the Bill or the scope of this project and therefore noted or acknowledged); and
- Noted – passed on to the relevant team/agency (this is where comments are those as described above but where it is considered the comments are not within the scope of the project and can be directed to a relevant team of the directorate, or government for information in the work that the comment might be more relevant to).¹²⁸

3.32. The Committee is of the view that, in accordance with the principles of meaningful, respectful and transparent consultation detailed in the Bill, the concerns of participants in consultation processes should be acknowledged, and detailed reasons should be provided when their recommendations are not actioned.

¹²⁷ Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 86.

¹²⁸ Mr Mick Gentleman MLA, *answer to QON 4: Consultation on Planning Bill*, 9 December 2022 (received 20 December), p 1.

Recommendation 3

The Committee recommends that the ACT Government publish explicit and detailed reasons in a listening report or consultation report as to why the recommendations that were made by those who submitted to the government consultation were not actioned in the Bill, Territory Plan, or District Strategy. This should be an ongoing practice, and accordingly, the proposed Territory Planning Authority should consider and respond to community and stakeholder feedback on Territory Plan variations.

Quality, not quantity

3.33. Witnesses and submissions also expressed the sentiment that while there was a large amount of consultation, it was lacking in quality and did not assist people in understanding the Bill.¹²⁹

3.34. The Master Builders Association of the ACT said that the consultation did not match the Bill's complexity:

[T]he process by which the government has gone about consulting on the bill and the Territory Plan is something that we think could be substantially improved.

I think it would be near impossible for any member of the ACT community to fully understand the bill that has been presented, with the resources and support we have been provided by the government to do so. It is an extremely complex piece of legislation and it is actually very difficult to provide a full and detailed assessment of the bill because of the difficulty during the consultation process.¹³⁰

3.35. Mr Geoff Pryor, Convenor, Canberra Planning Action Group was critical of the breadth of consultation undertaken:

We have also been very critical of the consultation process. The reason we have been critical about that is because the consultation process cannot be accepted in the way it has been undertaken—again, Mr Maclean mentioned other issues like housing, groups of people who are disadvantaged, young people and unemployed people. We have figured out something like about 0.1 per cent of the population was engaged in this consultation, yet it is not a statistical issue; it is about everybody's right to think about the future of their community.¹³¹

3.36. Gungahlin Community Council stated that consultation did not engage with community or industry:

The process of the planning reform has not taken the community—and, to be honest, industry—along with it. We have been handed material over the table.

¹²⁹ See, for example: Name withheld, *Submission 61*, p 10; Gungahlin Community Council, *Submission 36*, p 1; Curtin Residents' Association, *Submission 37*, p 1.

¹³⁰ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 20.

¹³¹ Mr Geoff Pryor, Convenor, Canberra Action Planning Group, *Committee Hansard*, 6 December 2022, p 39.

We have not been around the table in developing the new planning reform, so we have, in fact, not regained any of the confidence or rebuilt any of the trust that was required to carry forward.¹³²

- 3.37. This was echoed by Mr Andrew Donnellan, Secretary, Greater Canberra, who argued that traditional methods of consultation undertaken by governments in Australia generally prohibit participation:

Our thinking around public consultation is that you need to make consultation as low cost and accessible to as broad a subset of the community as possible. At present what is often found, not just in Canberra but in other jurisdictions in Australia and internationally, is that a lot of systems for public consultation are built around quite expensive forms of participation.

Things like turning up at hearings and writing detailed written submissions consume a lot of time. They are difficult for people, particularly those in the workforce, who lead busy lives and really would prefer to be doing just about anything else with their lives than sitting down and reading hundreds of pages of planning legalese.

In our submission, and our discussion around public consultation, we want to see principles of good consultation that emphasise representative consultation done using methods that allow people to convey their opinion in a low effort form that does not require huge amounts of free time in order to participate. So, we are talking about the use of representative sampling and the use of surveying techniques that can account for the discrepancies in different demographics to make sure that people from different age groups and different income levels get heard equally and get their responses weighted equally in public consultation reports.¹³³

- 3.38. The Master Builders Association of the ACT also emphasised the importance of ‘quality over quantity’:

But in hindsight, if we had this process over again, we would like to have seen a lot more resources from government put into supporting the consultation process—running information sessions, running detailed sessions. There is a difference between quantity of consultation and quality of consultation. While I have sat through many presentations from government officials about the bill and the Territory Plan, I would not say they are quality. We have not got into the depth of understanding of the bill and the Territory Plan that I think we really need to, to get meaningful feedback and to provide meaningful comments for improvement.¹³⁴

¹³² Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2022, p 74.

¹³³ Mr Andrew Donnellan, Secretary, Greater Canberra, *Committee Hansard*, 6 December 2022, p 40.

¹³⁴ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, pp 20–21.

- 3.39. The Master Builders Association of the ACT also noted that the timing of the consultation on the Territory Plan and District Strategy was an issue, being over the Christmas period when most people would be on their summer break and public servants unavailable for questions, meetings and information sessions.¹³⁵
- 3.40. Many witnesses and submissions also more generally commented on the importance of quality, in-depth and transparent consultation as a way of creating trust and confidence in the new planning system.¹³⁶

Understanding through examples and case studies

- 3.41. One area that the Master Builders Association of the ACT identified as lacking in the ACT Government's consultation on the Bill, supporting Territory Plan and District Strategies, was being able to see how the new planning system would operate through examples:

I think some examples would be really useful in two parts. One, it would be useful for industry, who use the plan on a day-to-day basis, to actually workshop how you use the bill and the plan, and to run some example projects in a workshop format to illustrate how the new bill and the new Territory Plan will work. But I think it will also be useful to share the results of those examples so that everyone can see the difference between the new system and the current system.¹³⁷

- 3.42. Ms Fiona Carrick, President, Woden Valley Community Council also supported case studies:

Maybe one way to see where it does work is to run some case studies and see how it gets us good outcomes. We can put forward the Woden town centre and say, "How does the bill get us good outcomes? How does it improve things?"¹³⁸

- 3.43. The Committee recognises the views expressed from community and industry stakeholders that consultation on the Bill was sufficient in quantity but not of the highest quality, and that higher quality consultation is required for District Strategies and the Territory Plan. Such consultation should include hypothetical examples and case studies, in-depth information sessions, and time for questions.
- 3.44. The Committee notes the complexity of the reform package and considers that consultation should allow time for industry and the community to consider the reforms as a whole before implementation of the new system.
- 3.45. The Committee does however acknowledge that the ACT Government is actively planning to provide case studies on how Development Applications (DAs) and Territory Plan

¹³⁵ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 20.

¹³⁶ See, for example: Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 21; Name withheld, *Submission 61*, p 10; Suzanne Vaisutis-White, *Submission 33*, p 5; Planning Institute of Australia (ACT Division), *Submission 39*, p 13.

¹³⁷ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 21.

¹³⁸ Ms Fiona Carrick, President, Woden Valley Community Council, *Committee Hansard*, 6 December 2022, p 63.

variations will be processed under the new Act and Territory Plan. The Committee encourages the ACT Government to follow through with this commitment.¹³⁹

Recommendation 4

The Committee recommends that the ACT Government provide hypothetical examples of planning decisions and outcomes during the consultation and workshop these to demonstrate how this new system works and how it differs from the current system.

Access to and disclosure of information

Accessibility for all

- 3.46. A concern held by many witnesses¹⁴⁰ was the lack of access to, and disclosure of, information and decisions under the current system, and a concern that this would continue under the new Bill.
- 3.47. The Environmental Defenders Office commented in their submission that the Bill is an improvement on the existing legislation, with provisions for the creation of a public website which must have certain notifications and decisions displayed on it, and for the authority to maintain a public register which must contain certain information.¹⁴¹
- 3.48. They noted, however, the importance of ensuring that the information on the website and register is accessible to all. Canberrans can currently inspect free of charge the public register at the Access Canberra shopfront in Dickson or by emailing the Environment, Planning and Sustainable Development Directorate (EPSDD). There is currently a fee for inspecting associated documents.¹⁴²
- 3.49. The Environmental Defenders Office also highlighted in their submission that 14.1 percent of ACT residents indicated in the 2016 Census that they do not have internet from their dwelling, and 10.1 percent of households indicated they do not have any access to the internet at all.¹⁴³
- 3.50. Twenty-two percent of households in the ACT also indicated in the Census that they speak a language other than English at home.¹⁴⁴
- 3.51. The Committee considers that, in line with the ACT Government's commitment to transparency in processes and information, information on the Territory Planning Authority's website and public register should be freely accessible to all residents, including those without internet access.

¹³⁹ Mr Mick Gentleman MLA, *answer to QON 15: Examples*, 9 December 2022 (received 19 December 2022), p 1.

¹⁴⁰ See, for example: Name withheld, *Submission 61*, p 25; Tim Field, *Submission 24*, p 3; Weston Creek Community Council, *Submission 38.1*, p 7; ACT Law Society, *Submission 62*, p 4; Belconnen Community Council, *Submission 65*, p 2.

¹⁴¹ Environmental Defenders Office, *Submission 9.1*, p 47.

¹⁴² Environmental Defenders Office, *Submission 9.1*, p 47.

¹⁴³ Environmental Defenders Office, *Submission 9.1*, p 48.

¹⁴⁴ Environmental Defenders Office, *Submission 9.1*, p 47.

Recommendation 5

The Committee recommends that the ACT Government ensure that the Territory Planning Authority's website is accessible and make explicit the ability for members of the public to access information in-person at Access Canberra, as well as ensuring the same information is available to people with no internet access, at no additional cost.

Developments and Development Applications

Pre-DA consultation

- 3.52. The Committee heard several concerns from a wide range of submitters and witnesses, including members of the planning and construction industry, residents' associations, community councils, individuals and community groups,¹⁴⁵ about the removal of pre-Development Application (pre-DA) consultation from the Bill.
- 3.53. While the Master Builders Association of the ACT¹⁴⁶ and Property Council of Australia (ACT Division)¹⁴⁷ supported the removal of pre-DA consultation, on the grounds that it had not delivered on intended outcomes, other industry representatives argued that it should be retained, with the Planning Institute of Australia (ACT Division) describing the removal as a 'retrograde step'.¹⁴⁸
- 3.54. The Committee heard from Mr Glen Hyde, Deputy Chair, Belconnen Community Council, that community councils were 'all in heated agreement that pre-DA consultation is absolutely necessary', citing as an example the Suburban Land Agency's consultation process on Belconnen Town Centre, which he said was 'absolutely faultless'.¹⁴⁹
- 3.55. Gungahlin Community Council concurred, saying that Suburban Land Agency's consultations had 'been exemplary in that they have been early, they have been well informed and they have been deep'. They also noted that the most fruitful consultations included honest dialogue rather than 'a quick presentation'.¹⁵⁰
- 3.56. In their submission, North Canberra Community Council noted that, according to the Bill's Explanatory Statement, pre-DA consultation is to be replaced with the principles of good consultation. North Canberra Community Council expressed concern that the principles of good consultation only apply where consultation is required under the Bill, and since

¹⁴⁵ See, for example: Dr Ann Kent, *Submission 25*, p 1; Griffith Narrabundah Community Association, *Submission 32*, pp 2–3; Gungahlin Community Council, *Submission 36*, p 2; Curtin Residents' Association, *Submission 37*, pp 3–4; Planning Institute of Australia (ACT Division), *Submission 39*, pp 2, 11–15; Margaret Dudley, *Submission 44*, p 2; Inner South Canberra Community Council, *Submission 45.1*, pp 1, 4; Ian Hubbard, *Submission 51*, pp 4–5; Caroline Le Couteur, *Submission 53*, p 5; Woden Valley Community Council, *Submission 55*, p 6; Dr Martha Kinsman, *Submission 56*, p 2; Gina Pinkas, *Submission 57*, p 9; Name withheld, *Submission 61*, pp 8–10, 31–32; Belconnen Community Council, *Submission 65*, p 4.

¹⁴⁶ Master Builders Association of the ACT, *Submission 2.1*, p 9.

¹⁴⁷ Property Council of Australia (ACT Division), *Submission 58*, p 10.

¹⁴⁸ Planning Institute of Australia (ACT Division), *Submission 39*, p 2.

¹⁴⁹ Mr Glen Hyde, Deputy Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2022, pp 70–71.

¹⁵⁰ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2022, pp 71–72.

consultation would no longer be required in relation to a DA, the effect would be that consultation for large DAs would no longer be mandatory.¹⁵¹

- 3.57. One property developer, Molonglo Group, shared the community group's support for early consultation in the development process, and told the Committee that they aim to engage with the community early to earn the trust of communities and neighbours and find out how to 'meet the aspirations of the broadest range of people'.¹⁵²
- 3.58. During the public hearing on 6 December 2022, the Planning Institute of Australia (ACT Division) described the pre-DA consultation process as a worthwhile opportunity for residents to have a say in perceived impacts of a development and offer ideas on mitigating those impacts, as well as to understand what a developer may be trying to achieve.¹⁵³
- 3.59. Although pre-DA consultation received wide-spread support in the evidence, the Committee did hear some concerns with the process.
- 3.60. The Committee heard from Dr Martha Kinsman during the public hearing on 6 December 2022 that consultation with transient populations can be ineffective, as residents do not have long-term plans to live in the area. She suggested that new residents could stand as 'surrogates for renters and aspiring residents. There are also other groups that are speaking on behalf of renters and so on'.¹⁵⁴
- 3.61. In their submission, Greater Canberra noted that public consultation processes tend to favour residents from higher socioeconomic and educational backgrounds, homeowners, retirees and those without dependents.¹⁵⁵
- 3.62. During the public hearing on 6 December 2022, Greater Canberra called for representative sampling and surveying techniques 'to make sure that people from different age groups and different income levels get heard equally and get their responses weighted equally in public consultation reports'.¹⁵⁶
- 3.63. Also during the public hearing on 6 December 2022, Ms Marea Fatseas, Chair, Inner South Canberra Community Council, suggested that the pre-DA consultation process could be improved, including by incorporating it into the design review process carried out by the National Capital Design Review Panel (NCDRP):
- Design of a precinct is not just about the architectural form and the town planning form; it is also about how it engages the community in those spaces and whether it responds to how people feel that place works.¹⁵⁷
- 3.64. In their submission, Canberra Planning Action Group called for pre-DA consultation to be conducted in the same timeframe as consideration by the NCDRP, and not after the NCDRP

¹⁵¹ North Canberra Community Council, *Submission 40*, p 1.

¹⁵² Mr Gordon Lowe, Head of Planning, Molonglo, *Committee Hansard*, 6 December 2022, p 29.

¹⁵³ Mr Peter Johns, Committee member, Planning Institute of Australia (ACT Division), *Committee Hansard*, 6 December 2022, p 13.

¹⁵⁴ Dr Martha Kinsman, *Committee Hansard*, 6 December 2022, p 84.

¹⁵⁵ Greater Canberra, *Submission 59*, p 26.

¹⁵⁶ Mr Andrew Donnellan, Secretary, Greater Canberra, *Committee Hansard*, 6 December 2022, p 40.

¹⁵⁷ Ms Marea Fatseas, Chair, Inner South Canberra Community Council, *Committee Hansard*, 6 December 2022, p 60.

had signed off on a proposal, citing 'siloes feedback' as a major problem with the current process.¹⁵⁸ This proposal drew support from a number of other submitters.¹⁵⁹

3.65. The Planning Institute of Australia (ACT Division), in their submission, suggested instead that pre-DA consultation should take place before referral to the NCDRP, and that a report on the community consultation should be included in the referral documentation.¹⁶⁰

3.66. When asked about the removal of pre-DA consultation from the Bill at the public hearing on 7 December 2022, the Minister for Planning and Land Management, Mr Mick Gentleman MLA responded:

...pre-DA consultation was not working. There was an expectation that was given to the community which was not successful. So the community thought that if we had pre DA consultation their views would be taken into account by the proponent and therefore the original idea that a proponent may put would be changed by the views of the community, and it simply did not occur.¹⁶¹

3.67. Mr Ben Ponton, Director-General, EPSDD, added that there was a community perception that pre-DA community consultation was government consultation rather than developer consultation, which caused confusion as to the process:

It was one of the real challenges and risks, and then we were being asked to put a stop to it because people did not like what they were seeing.¹⁶²

3.68. The Committee acknowledges that pre-DA consultation has room for improvement but believes that the process is too valuable to be removed from the Bill entirely. Instead, pre-DA consultation should be strengthened through principles of good consultation, including that consultation be timely and 'facilitates and encourages constructive responses from a wide range of stakeholders', as outlined in Part 2.2 of the Bill.¹⁶³

Recommendation 6

The Committee recommends that the ACT Government amend the Bill to include a requirement that, for significant developments, the proponents undertake consultation early in the development process and prior to the Development Application consultation process.

Recommendation 7

The Committee recommends that the ACT Government include in the requirement for consultation early in the development process that the consultation be in accordance with the principles of good consultation and that proponents

¹⁵⁸ Canberra Planning Action Group, *Submission 30*, p 3.

¹⁵⁹ See, for example: Gordon Lucas, *Submission 13*, p 1; Caroline Wenger, *Submission 19*, p 1; M Saunders, *Submission 20*, p 2.

¹⁶⁰ Planning Institute of Australia (ACT Division), *Submission 39*, p 2.

¹⁶¹ Mr Mick Gentleman MLA, Minister for Planning and Land Management, *Committee Hansard*, 7 December 2022, p 169.

¹⁶² Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2022, p 170.

¹⁶³ Planning Bill 2022, Part 2.2.

demonstrate how the proponent has incorporated community feedback into the development proposal as proposed in the Development Application.

Threshold on corrections to a DA

- 3.69. During the public hearing on 6 December 2022, the Committee heard from the Griffith Narrabundah Community Association that there should be a limit on the number of amendments a developer may make to a development application during the approval process.¹⁶⁴
- 3.70. Ms Susanne (Sue) Tongue, Vice President, Griffith Narrabundah Community Association, observed that on one occasion, she had seen eight amendments to a development application, with the ACT Planning and Land Authority acting to ‘shepherd’ such applications through to approval.¹⁶⁵
- 3.71. During the hearing on 6 December 2022, Mr Jeffrey Bollard, Vice President, Tuggeranong Community Council, called for communities to be provided with feedback on such consultation, saying that ‘it seems that we go through a pre-DA consultation, there are a number of objections, then we see alterations to the DA and it does not restart again; it just flows on from there’.¹⁶⁶
- 3.72. The Planning Institute of Australia (ACT Division) noted that a post-consultation report could provide the community with a summary of issues raised, and justification for the approach adopted, ‘so that people can see their voices were heard’ and that a reasonable outcome had been achieved.¹⁶⁷
- 3.73. It is the view of the Committee that the public is often at a disadvantage when considering development applications which are subject to multiple amendments, sometimes up until the time of approval.

Recommendation 8

The Committee recommends that the ACT Government consider implementing a threshold on how many corrections a proponent can make to a Development Applications, especially when an amendment to a Development Application is a substantial to the design and requires further consultation.

¹⁶⁴ Ms Sue Tongue, Vice President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2022, p 66.

¹⁶⁵ Ms Sue Tongue, Vice President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2022, p 66.

¹⁶⁶ Mr Jeffrey Bollard, Vice President, Tuggeranong Community Council, *Committee Hansard*, 6 December 2022, p 61.

¹⁶⁷ Mr Peter Johns, Committee member, Planning Institute of Australia (ACT Division), *Committee Hansard*, 6 December 2022, pp 14–15.

Consistent point of contact

- 3.74. The Committee heard from residents and community councils that the planning system could be difficult for laypeople to navigate without assistance.¹⁶⁸
- 3.75. During the public hearing on 6 December 2022, Gungahlin Community Council, told the Committee that community engagement with government is very difficult. Community councils are small, and rely on people working ‘incredibly hard in their own time’ to achieve good representation of the community and good outcomes.¹⁶⁹
- 3.76. Mr Glen Hyde, Deputy Chair, Belconnen Community Council, concurred, saying that having a panel of experts to review decisions and difficulties that arise during DAs would be a good arrangement, in particular incorporating ‘someone who can liaise with the community councils and draw that community expectation and experience into the panel’.¹⁷⁰
- 3.77. At the public hearing on 6 December 2022, Ms Kate Bradney told the Committee that an independent advisory body could provide welcome support for community members.¹⁷¹
- 3.78. Likewise, the Committee heard from Ms Fiona Carrick, President, Woden Valley Community Council, that an expert advisory panel for DAs would provide the community ‘more of a comfort level about the process’ and could result in fewer vexatious claims to the ACT Civil and Administrative Tribunal (ACAT).¹⁷²
- 3.79. The Molonglo Group suggested that the ACT Government could incentivise genuine public participation in the planning process by streamlining review by the NCDRP or providing a case officer in EPSDD for the application.¹⁷³
- 3.80. Ms Imogen Featherstone, Development Manager (Planning), Riverview Projects, observed that it is important to be clear during stakeholder engagement that the community may not end up getting everything it asks for:
- We have a very smart community in Canberra and they have great ideas, but at times they may not have the skill set or professional understanding of what the implementation of that actually means.¹⁷⁴
- 3.81. The Committee is of the view that a consistent touchpoint provided to proponents and stakeholders in DAs would be beneficial to all parties in ensuring that inquiries are handled properly and in a well-informed manner. Furthermore, an independent planning advisory

¹⁶⁸ See, for example: Ms Kate Bradney, *Committee Hansard*, 6 December 2022, p 93; Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2022, p 75; Mr Glen Hyde, Deputy Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2022, p 75.

¹⁶⁹ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2022, p 75.

¹⁷⁰ Mr Glen Hyde, Deputy Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2022, p 75.

¹⁷¹ Ms Kate Bradney, *Committee Hansard*, 6 December 2022, p 93.

¹⁷² Ms Fiona Carrick, President, Woden Valley Community Council, *Committee Hansard*, 6 December 2022, p 59.

¹⁷³ Mr Gordon Lowe, Head of Planning, Molonglo, *Committee Hansard*, 6 December 2022, p 29.

¹⁷⁴ Ms Imogen Featherstone, Development Manager (Planning), Riverview Projects, *Committee Hansard*, 6 December 2022, p 31.

service could improve the public's understanding of the potential outcomes of any planned or proposed development.

Recommendation 9

The Committee recommends that the ACT Government provides a consistent touchpoint on cases for Development Applications such as through a system or case manager, to ensure all inquiries are handled properly and in a well-informed manner for proponents and stakeholders.

Exempt developments

- 3.82. Margaret Henderson told the Committee that '[w]hat constitutes exempt development in the Bill remains as opaque as under the 2007 Act' and that exempt development provisions were often manipulated by developers and owners, to the detriment of neighbours. Ms Henderson called for clear and transparent criteria for exempt development.¹⁷⁵
- 3.83. The Inner South Canberra Community Council noted that they had surveyed residents and found 'an overwhelming percentage' called for neighbours to be consulted on knockdown-rebuilds of single dwellings, which are exempt developments. The Inner South Canberra Community Council argued that such developments 'may seriously erode neighbourhood character by taking up most of the block and having almost no green space'.¹⁷⁶
- 3.84. The Committee is of the view that the Bill be amended to clarify what exactly constitutes as an 'exempt development', and for provisions in the Bill to include clear penalties on those who are abusing the system.

Recommendation 10

The Committee recommends that the ACT Government introduce amendments to the Bill to provide clearer penalties to act as a deterrent for 'exempt development' that is not in fact exempt.

Governance and accountability

- 3.85. Many witnesses held concerns around the concentration of power and governance structures in the Bill.¹⁷⁷

Independent advice

- 3.86. Several witnesses expressed concern at the governance structure the Bill was proposing to establish and its implications for the provision of independent and impartial advice to the proposed Territory Planning Authority.

¹⁷⁵ Margaret Henderson, *Submission 15*, p 2.

¹⁷⁶ Inner South Canberra Community Council, *Submission 45.1*, pp 2–3.

¹⁷⁷ See, for example: Ms Marea Fatseas, Chair, Inner South Canberra Community Council, *Committee Hansard*, 6 December 2022, pp 62–63; Mr Bill Gemmell, Chair, Weston Creek Community Council, *Committee Hansard*, 6 December 2022, p 63; Mr Geoff Pryor, Convenor, Canberra Action Planning Group, *Committee Hansard*, 6 December 2022, p 47.

- 3.87. Ms Marea Fatseas, Chair, Inner South Canberra Community Council, expressed concern about the concentration of roles:

If you look at the director-general's role, you have got the tree conservator, you have got the heritage function and you have got the environmental aspects, as well as the planning aspects. So the director general has a number of different roles that he, in this case, has to perform. The chief planner should be looking at the planning outcomes and that whole area. If you look at the organisation chart, under the act I think the planning authority is the chief planner, so you are really talking about one individual.

If you look at the organisational chart of the EPSDD, you would expect that if the planning authority is really independent there would be a direct line from the planning authority to the minister. In fact, if you look at the organisational chart there are a few individuals and they are kind of highlighted and then there is a great big gap; there is no direct reporting line to the chief planner. And then you have got the chief planner.

To me, having people within an agency and saying that they are independent and they are reporting directly to the chief planner—you just look at the evidence of the organisational chart and it is just part of a line to parliament—I just do not think that you are getting checks and balances. That is quite apart from the issue that Fiona and Bill mentioned, which is that you do not have the checks and balances that you have in other states and territories who do not have city councils.

When you have conflation of those roles it reduces the opportunity for different perspectives even more so, so you are seeing a greater and greater concentration of power. Three years ago we were told specifically that governance was off the table in this review. We wanted to talk about things like having an independent planning authority, and basically we were told governance was off the table. To have the planning authority then running the planning review process itself and, as a result of that planning process, having a further concentration of power in that role is a recipe for disaster.¹⁷⁸

- 3.88. The Canberra Ornithologists Group suggested that the ACT Conservator of Flora and Fauna should be more independent:

Essentially, the Chief Planner is also the boss of the Conservator. We feel that the Conservator needs to be an independent entity completely and separated from the directorate. We also feel that their advice has to be taken into account unless there is a very clear process for when their advice is, "No; we are not going to do that," for whatever reasons.¹⁷⁹

¹⁷⁸ Ms Marea Fatseas, Chair, Inner South Canberra Community Council, *Committee Hansard*, 6 December 2022, pp 62–63.

¹⁷⁹ Ms Clare Henderson, Committee member, Canberra Ornithologists Group, *Committee Hansard*, 6 December 2022, p 112.

3.89. Weston Creek Community Council echoed concerns around the concentration of roles:

How can the chief planner separate his role from being the director general when you have got clashes in accountability between the two? How do they do it? Do they take a step back, pretend they have not heard as they are making a decision? I do not know, but that really troubles me.¹⁸⁰

3.90. In response to a Question on Notice (QON) on governance arrangements, Minister Gentleman noted that:

Advice provided by any referral entity is intended and expected to be “frank and fearless” (refer to Sections 8 and 9 of the *Public Sector Management Act 1994*).

Advice provided by any referral entity is intended and expected to be independent (refer to Sections 8 and 9 of the *Public Sector Management Act 1994* and relevant legislation relating to the entity).¹⁸¹

3.91. The Committee, however, also heard from Minister Gentleman in a response to a separate Question on Notice that ‘The approved duty statement of Director-General notes that the occupant is also the Chief Planning Executive and must hold appropriate management experience or expertise to hold that position, as per the *Planning and Development Act 2007*’.¹⁸²

3.92. Minister Gentleman further noted in the QON response in relation to the Chief Planner that:

The Chief Planner has no role in appointing, dismissing, directing, tasking or remunerating staff employed by EPSDD, or any other entity within the ACT Public Service.

3.93. However, it was also stated in the QON response that:

The Director-General is responsible for the strategic leadership of EPSDD and delivering its portfolio responsibilities. In fulfilling this role, the Director-General may from time to time exercise certain powers in appointing, dismissing, directing, tasking or remunerating staff as delegated in legislation (for EPSDD only) ... Executive contracts (for example, the Conservator of Flora and Fauna) are administered centrally by the Chief Minister, Treasury and Economic Development Directorate on behalf of the Head of Service, who has responsibility for Executive appointments, suspensions, and terminations (see the *Public Sector Management Act 1994*). Remuneration of Executives is set by the ACT Remuneration Tribunal, not the Director-General.

¹⁸⁰ Mr Bill Gemmell, Chair, Weston Creek Community Council, *Committee Hansard*, 6 December 2022, p 63.

¹⁸¹ Mr Mick Gentleman MLA, *answer to QON 7: Governance Structure*, 9 December 2022 (received 19 December 2022), p 1.

¹⁸² Mr Mick Gentleman MLA, *answer to QON 7: Governance Structure*, 9 December 2022 (received 19 December 2022), p 1.

- 3.94. In reviewing the evidence, the Committee noted many concerns around governance arrangements in the Bill and believes that this warrants further consideration by the ACT Government.
- 3.95. The Committee wishes to be very clear that it is not impugning any individual officer's reputation and stresses that this recommendation is to set up good governance structures that are appropriate for the new planning system.

Recommendation 11

The Committee recommends that the ACT Government review the current arrangement whereby the role of the Chief Planner and the role of the Director-General of EPSDD are held by the same person, to see whether better governance and potentially better outcomes could be achieved by separating those roles.

Recommendation 12

The Committee recommends that the ACT Government review governance and administrative arrangements to ensure that entities and individuals that are intended to provide frank, fearless and independent planning advice to the Chief Planner, can do so.

Consistency with government strategies and policies

- 3.96. Witness concerns around governance also fed directly into concerns around the decision-making powers of key decision-makers in the Bill.
- 3.97. Mr Gordon Lowe, Head of Planning, Molonglo expressed concern over the loose requirements of section 47(c) of the Bill, which states that the Territory Plan 'may give effect to relevant outcomes related to planning contained in other government strategies and policies'.¹⁸³
- 3.98. Canberra Planning Action Group were concerned that this gave the ACT Executive, the Minister for Planning and Land Management, and the Territory Planning Authority the ability to do things inconsistent with the Territory Plan and key instruments and policies that relate to planning, including:
- the Climate Strategy;
 - Variation 369;
 - the Living Infrastructure Plan; and
 - design guides and specifications that cover matters like solar access and heritage.¹⁸⁴
- 3.99. In response to a Question Taken on Notice in relation to these concerns, Minister Gentleman noted that:

¹⁸³ Mr Gordon Lowe, Head of Planning, Molonglo, *Committee Hansard*, 6 December 2022, p 34.

¹⁸⁴ Mr Gordon Lowe, Head of Planning, Molonglo, *Committee Hansard*, 6 December 2022, p 34.

Section 183(a) of the Planning Bill 2022 provides that when deciding a development application under section 182, the decision maker must consider any applicable desired outcomes in the Territory Plan.¹⁸⁵

3.100. Minister Gentleman also stated in a response to a Question on Notice relating to Variation 369 that:

Under Section 50 of the Bill the Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the Territory Plan.

The provisions enacted through Variation 369 forms part of the current Territory Plan and will appear at various points within the provisions of the new Territory Plan and supporting material'.¹⁸⁶

3.101. In the same Question on Notice response, Minister Gentleman also commented with respect to design guides:

The Bill does not include provisions that set out that design guides are mandatory, however the new Territory Plan includes stated assessment outcomes that require proponents to demonstrate consistency with the design guides. This effectively makes consistency with design guides a mandatory outcome.¹⁸⁷

3.102. Minister Gentleman, however, noted in a different Question on Notice response that consideration of strategies such as the ACT Climate Strategy and Living Infrastructure Plan are only discretionary 'because not all of the provisions in these government policies are relevant to planning'.¹⁸⁸

3.103. The Committee is of the view that whilst a decision-maker must consider any applicable desired outcomes in the Territory Plan, clause 47 still provides a degree of discretion. The Committee recommends that the Bill be amended to require that the Territory Plan must give effect to relevant outcomes related to planning contained in other government strategies and policies, and that decision-makers be required to not do anything inconsistent with the Territory Plan and key supporting instruments and policies.

Recommendation 13

The Committee recommends that the ACT Government amend clause 47 of the Bill to ensure that the Territory Plan must give effect to relevant outcomes related to planning contained in other government strategies and policies.

¹⁸⁵ Mr Mick Gentleman MLA, *answer to QTON 10: What are the provisions requiring compliance with Variation 369 in the Bill*, 7 December 2022 (received 15 December 2022), p 1.

¹⁸⁶ Mr Mick Gentleman MLA, *answer to QON 1: Design Guides*, 9 December 2022 (received 19 December 2022), p 1.

¹⁸⁷ Mr Mick Gentleman MLA, *answer to QON 1: Design Guides*, 9 December 2022 (received 19 December 2022), p 1.

¹⁸⁸ Mr Mick Gentleman MLA, *answer to QON 1: Section 47 of the Territory Plan*, 9 December 2022 (received 19 December 2022), p 1.

Entity advice in decision-making

3.104. While subclause 183(k) provides for the Territory Planning Authority to consider a range of factors and advice in deciding a development application,¹⁸⁹ several witnesses expressed concern over the discretionary authority of the Chief Planner to approve a development contrary to entity advice, including where the proposal is inconsistent with the advice of the ACT Conservator of Flora and Fauna.¹⁹⁰

3.105. This view was echoed by Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment:

If you refer back to the written submission that was made by the office, recommendation 4 states that the Chief Planner should not be provided with the power to approve a development contrary to entity advice. So we make quite an unequivocal statement there. The basis for that is that there may be potential conflicts of interest for the Chief Planner to have that power to approve a development, and that that should not be the case. That does not speak to the current person sitting in that role; that refers to that as a role rather than a specific person and that that is not a robust governance structure.¹⁹¹

3.106. Similarly, the Canberra Ornithologists Group expressed concern that environmental outcomes would not be achieved under the discretionary powers:

The provision has changed slightly between the current act and the proposed one but not substantially—and we can provide examples if you would like—but quite regularly the Chief Planner goes, “Thanks for your advice. I am required to ask for your advice and to look at your advice in certain situations, but I do not have to abide by it and I can overrule you.” In our view, that just means that the environment quite often is being overridden.¹⁹²

3.107. In the case of applications for significant development that are likely to have a significant adverse environmental impact on a declared protected matter, and that are inconsistent with advice from the ACT Conservator of Flora and Fauna, the Environmental Defenders Office noted the Chief Planner can still approve the application if the proposal is consistent with the offsets policy and the proposal would provide a ‘substantial public benefit’.¹⁹³

3.108. The Environmental Defenders Office agreed that it would be too easy to override environmental concerns:

It is not appropriate for the Chief Planner to have the power to approve a development that is likely to have a significant adverse environmental impact on a

¹⁸⁹ Planning Bill 2022, subcl 183(k).

¹⁹⁰ Richard Johnston, *Submission 6*, p 7; Environmental Defenders Office, *Submission 9.1*, p 29; Inner South Canberra Community Council, *Submission 45.1*, p 8; Belconnen Community Council, *Submission 65*, p 6.

¹⁹¹ Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2022, p 134.

¹⁹² Ms Clare Henderson, Committee member, Canberra Ornithologists Group, *Committee Hansard*, 6 December 2022, p 112.

¹⁹³ Environmental Defenders Office, *Submission 9.1*, p 38.

declared protected matter, even if it would provide a substantial public benefit...[W]e are concerned that, without clear and appropriate limits on the Chief Planner's power, there is a significant risk that the Chief Planner will be empowered to approve most significant development proposals in the ACT even if they have an unacceptable impact on the environment. The Bill must therefore set clear and appropriate limits on the Chief Planner's power to override the Conservator's advice on development applications.¹⁹⁴

- 3.109. The transparency of these decisions was also raised as an issue. The Committee heard from both the Director-General of EPSDD¹⁹⁵ at the public hearing and Minister Gentleman in a QON response¹⁹⁶ that it is the practice of the current ACT Planning and Land Authority to publish all entity advice received and provide and publish on the ACT Planning and Land Authority's website reasons for the departure from the advice.
- 3.110. However, the Canberra Ornithologists Group stated in a response to a Question Taken on Notice that the planning decisions published are 'often in very generalised and formulaic terms that do not reveal how or why the Chief Planner chose to override the advice of the ACT Conservator of Flora or Fauna, or how the different values were weighed':¹⁹⁷

The reasons provided can be broad as, for example, that the mature native trees that the Conservator recommends be retained cannot be retained as they interfere with the proposed road design, or that the cost of re-designing an Estate Plan to protect the mature native trees is significant.

No reference is made in such reasons to any guidelines or criteria or processes that underpin such decision-making, or why the road design or Estate Plan were initially designed without consideration of mature trees.

COG therefore suggests (and has previously submitted) that decisions to override the advice of the Conservator be more transparent and robust, be based on previously articulated and endorsed criteria, be independent from the Chief Planner, and only occur in exceptional circumstances.¹⁹⁸

- 3.111. The Canberra Ornithologists Group¹⁹⁹ also directed the Committee's attention to the independent *Review of the Roles and Functions of the ACT Conservator of Flora and Fauna* by PricewaterhouseCoopers in June 2011, which found 'concern about lack of transparency in relation to ACTPLA decisions in relation to the Conservator's advice'.²⁰⁰

¹⁹⁴ Environmental Defenders Office, *Submission 9.1*, p 38.

¹⁹⁵ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 6 December 2022, p 7.

¹⁹⁶ Mr Mick Gentleman MLA, *answer to QON 7: Consultation on Planning Bill*, 9 December 2022 (received 19 December 2022), p 4.

¹⁹⁷ Ms Clare Henderson, Canberra Ornithologists Group, *answer to QTON 4: Public reasons for decisions when advice is not followed*, 6 December 2022 (received 16 December 2022), p 1.

¹⁹⁸ Ms Clare Henderson, Canberra Ornithologists Group, *answer to QTON 4: Public reasons for decisions when advice is not followed*, 6 December 2022 (received 16 December 2022), pp 1–2.

¹⁹⁹ Ms Clare Henderson, Canberra Ornithologists Group, *answer to QTON 4: Public reasons for decisions when advice is not followed*, 6 December 2022 (received 16 December 2022), p 2.

²⁰⁰ PricewaterhouseCoopers, *Review of the Roles and Functions of the ACT Conservator of Flora and Fauna*, June 2011, p 1.

- 3.112. Consistent with the Canberra Ornithologists Group's analysis above, PricewaterhouseCoopers noted in its report that a number of stakeholders expressed concern that:

...there was limited feedback provided by ACTPLA as to how the Conservator's advice was considered with regard to planning issues and the reasons why a decision which is inconsistent with the Conservator's advice was made. Greater transparency, especially where ACTPLA makes a decision which is inconsistent with the advice of the Conservator by providing a more comprehensive statement of reasons, would facilitate greater public confidence in the integrity of the planning process.²⁰¹

- 3.113. The independent report made two recommendations in particular reference to the powers of the ACT Conservator of Flora and Fauna and transparency on the decisions to not follow the ACT Conservator of Flora and Fauna's advice:

Recommendation 3 – Powers of the Conservator in Planning and Development

The ACT Government to consider whether the powers of the Conservator to influence planning and development decisions should be strengthened under the Planning and Development Act 2007.

Recommendation 4 – Greater Transparency from ACTPLA in considering the Advice of the Conservator

The Delegate under the Planning and Development Act should provide greater transparency of ACTPLA decisions in relation to advice provided by the Conservator by providing more comprehensive reasons as to why a decision has been made which is inconsistent with the Conservator's advice when approving development applications and related decisions.²⁰²

- 3.114. The Committee recognises community concern that entity advice should be given due weight in planning considerations. The Committee is of the view that clear guidelines on when and how decisions may be made contrary to entity advice would provide accountability and reassure the community that such decisions are not taken lightly.

²⁰¹ PricewaterhouseCoopers, *Review of the Roles and Functions of the ACT Conservator of Flora and Fauna*, June 2011, p 7.

²⁰² PricewaterhouseCoopers, *Review of the Roles and Functions of the ACT Conservator of Flora and Fauna*, June 2011, p 2.

Recommendation 14

The Committee recommends that the ACT Government amend clause 187 of the Bill to ensure that when making decisions contrary to entity advice, the Bill:

- provides criteria as to what would ‘provide a substantial public benefit’;
- requires the decision-maker to publish reasons for the decisions; and
- sets clear limits on the decision-maker to override the ACT Conservator of Flora and Fauna’s advice.

Checks and balances

- 3.115. Several witnesses²⁰³ noted that in other jurisdictions, governance structures are set up to ensure the provision of independent advice and oversight into the planning system.
- 3.116. Mr Richard Johnston noted that the existing *Planning and Development Act 2007*, when introduced, removed the Commissioner for Land and Planning, an independent expert planner who determined significant DAs. It also removed the Local Area Planning Advisory Committee, which reviewed planning policy matter and provided comments on development proposals.²⁰⁴
- 3.117. In his submission, Mr Johnston noted that ‘The Territory Planning Authority seems to be unique in Australia in its wide range of powers all vested in **one individual** – the “chief planner”, who is also the CEO of a complex “directorate”’. He also noted that the ACT also only has one small house of parliament and no local government.²⁰⁵
- 3.118. In contrast, he noted that two states, South Australia and New South Wales, have bicameral parliaments, a planning department and independent planning commission, local councils, and regional and local planning boards and assessment panels which deal with more significant or controversial developments.²⁰⁶
- 3.119. Mr Johnston also cited comments provided to him by Professor Khalid Ahmed, adjunct professor at the University of Canberra’s Institute of Governance and Policy Analysis. Professor Ahmed commented in his correspondence to Mr Johnston that:

The Draft Planning Bill incorporates significant changes to the governance of the planning system in the Territory. In particular, it:

- Degrades the role and powers of the Legislative Assembly for oversight and input to key planning instruments;

²⁰³ See, for example: Richard Johnston, *Submission 6*, p 1; Gordon Lucas, *Submission 13*, p 1; M Saunders, *Submission 20*, p 2; Lake Burley Griffin Guardians, *Submission 28*, p 6; Canberra Planning Action Group, *Submission 30*, p 3; Margaret Dudley, *Submission 44*, p 1; Inner South Canberra Community Council, *Submission 45.1*, p 8.

²⁰⁴ Richard Johnston, *Submission 6*, p 2.

²⁰⁵ Richard Johnston, *Submission 6*, p 4.

²⁰⁶ Richard Johnston, *Submission 6*, p 4.

- Provides unspecified discretionary powers to the Minister to make planning instruments and directives, and to make rules for community input;
- Increases the powers and discretionary authority of the Chief Planning Executive; and
- Diminishes the role of the community in planning decisions.²⁰⁷

3.120. Woden Valley Community Council argued that a lack of checks and balances is leading to poor outcomes:

I think governance is a major issue because there are no checks and balances in our system. We have a unicameral system. We have got no house of review and we have got no local government. While we have the committee system, I am not sure that it is a body of expert planners that are providing advice to the government. What we need are independent experts that provide advice to the planning directorate and the government. Then, should that advice not be accepted by the government, they should say why they have not accepted it. Governments do not always accept advice, and that is fine, but they need to tell us why. At the moment, things are just slipping through and there is no explanation of why we are getting poor planning outcomes.²⁰⁸

3.121. Mr Albert Oberdorf, Member, Canberra Planning Action Group, similarly noted:

We note that the present bill actually diminishes the role of the Legislative Assembly. The Legislative Assembly is given no role in the metropolitan strategic plan or district strategy. The Legislative Assembly is given no role in supporting material to the territory plan et cetera.²⁰⁹

3.122. Mr Oberdorf reiterated these concerns with the Chief Planner's power to act before receiving the advice of the Commonwealth Minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cth):

We also notice that the bill gives the chief planner the capacity to act within 10 days if the federal minister for environment does not respond. If that is not taking away power from the elected people, I do not know what is.²¹⁰

3.123. Further, under the current 2007 Act, draft plan variations must be referred to the relevant Assembly Committee, for their consideration for possible inquiry. The Committee is then required to advise the Minister whether they intend to present a report on the draft plan variation within 20 working days. If the Committee does not respond to the Minister within the 20 days, the Committee is taken to have decided not to inquire into the matter.²¹¹

²⁰⁷ Richard Johnston, *Submission 6*, p 4.

²⁰⁸ Ms Fiona Carrick, President, Woden Valley Community Council, *Committee Hansard*, 6 December 2022, p 57.

²⁰⁹ Mr Albert Oberdorf, Member, Canberra Planning Action Group, *Committee Hansard*, 6 December 2022, p 47.

²¹⁰ Mr Albert Oberdorf, Member, Canberra Planning Action Group, *Committee Hansard*, 6 December 2022, p 47.

²¹¹ *Planning and Development Act 2007*, ss 73(5).

- 3.124. This 20-day time limit has been amended to 10 business days in the proposed Bill.²¹² The Committee notes that no explanation of this change has been provided in the explanatory statement to the Bill.
- 3.125. The Committee is concerned that the time allocated for committee consideration of draft plan approvals has been halved with no explanation. There are regularly periods in the ACT Legislative Assembly's calendar when it is difficult for committees to meet fortnightly, much less weekly (for example, during double sitting weeks, during Estimates or Annual Report hearings, or over summer and winter breaks).
- 3.126. Imposing a 10-day deadline creates undue pressure on committees and may result in decisions which are contrary to the purpose of considered scrutiny of public administration, on which committees are established.²¹³

Recommendation 15

The Committee recommends that the ACT Government ensure the Minister refer all major Territory Plan variations to the relevant Assembly Committee, and the Committee have 20 business days to decide whether to inquire, as per current provisions in the *Planning and Development Act 2007*.

If a shorter timeframe is required, then the Minister, when tabling the major Territory Plan variation, should request the relevant Assembly Committee to consider a shorter time period and provide reasons as to why urgency is needed.

Recommendation 16

The Committee recommends that the ACT Government explore opportunities to employ an independent professional body of experts who can feed into the decision-making process when overriding entity advice under clause 187 of the Bill.

Recommendation 17

The Committee recommends that the ACT Government review the timeline in the Bill that allows 10 days for the Federal Minister for Environment to respond to ensure that this timeline matches the Federal Minister's practices and if not, that this timeline be reviewed.

Objects of the Bill and principles of good planning

- 3.127. Another concern of witnesses was ensuring that key decision-makers act in ways consistent with the objects of the Bill and principles of good planning. Part of this concern has arisen

²¹² Planning Bill 2022, subcl 69(1), 69(2).

²¹³ Odger's *Australian Senate Practice*, 14th edition, p 461.

over what witnesses perceived as the subjective nature of ‘outcome-based’ planning as opposed to rules-based planning.²¹⁴

- 3.128. The Planning Institute of Australia (ACT Division) stated that aspirational statements have to be embedded in the operational elements of the Bill:

From our point of view, we support those statements at the start that talk about what good principles are, and we think they are all fine. But in the day-to-day working application of the legislation and the various components that follow from the legislation, such as the Territory Plan, those introductory principles and objects are often forgotten.

We have been working with the statement of strategic directions in the current Territory Plan, which are embedded right at the start of it, but—as a practising planner over the last 10 or 15 years—they do not really have any application in the day-to-day implementation and outcomes that appear on the ground.

So what we are saying here is that what we have is a good starting point. If we can then follow them through, either in their entirety or in the relevant parts of them being expressed again in the various sections, like the Territory Plan or the development assessment process, it would make a stronger end result—that those outcomes we are achieving on the ground are achieving those good planning principles and they have not been forgotten through that development process.²¹⁵

- 3.129. Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, argued that planning decisions under the Bill will involve more value judgement:

It will require a lot of value judgements to be made through the process because it will no longer be the process where an officer of government assesses a plan against a prescriptive rule and says, “Yes, it complies.” There will need to be a value judgement made. That will require us to trust the chief planner’s decision, at the end of the day, because ultimately it is that position making those value judgements. We all need to trust that decision, whether we agree with it or not.²¹⁶

- 3.130. The Environmental Defenders Office noted that the Bill does not uniformly apply its objects and that some key decisions are exempt:

Decision-makers are required to have regard to the object of the Bill in some, but not all, planning decisions. For example, there is no requirement to consider the

²¹⁴ See, for example: Ms Arabella Rohde, ACT Division Council President, Property Council of Australia (ACT Division), *Committee Hansard*, 7 December 2022, p 136; Dr David Denham AM, President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2022, pp 67–68; Ms Marianne Albury-Colless, Committee member, North Canberra Community Council, *Committee Hansard*, 6 December 2022, p 76; Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 6 December 2022, p 11.

²¹⁵ Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 6 December 2022, pp 10–11.

²¹⁶ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 23.

objects when the Executive makes the new Territory Plan under section 49(2), when the Minister decides under s 72(2) whether or not to approve a major Territory Plan amendment, or when a decision-maker other than the Territory Planning Authority (the Authority) decides under s 180(1) whether to approve a development application.

Objects are written for the purpose of setting overarching goals for legislation. However, there is often a risk that objects will be passed over as aspirational statements unless further mechanisms are put in place to ensure the achievement of objects. In our view there ought to be a broad requirement for people involved in administration of the Bill to make decisions and act consistently with the objects of the Bill.²¹⁷

- 3.131. The Committee is of the view that there is a requirement for stronger links in the legislation between the objects of the Bill and decisions made by decision-makers, due to the subjective nature of the Bill in contrast to the previous 2007 Act which was more prescriptive in nature.

Recommendation 18

The Committee recommends that the ACT Government provide sufficient links, in the legislation, between the objects of the Bill and decisions by decision-makers.

Recommendation 19

The Committee recommends that the ACT Government ensure that people and bodies involved in the administration of the Bill are required to exercise powers and functions and make decisions consistently with the objects of the Bill.

Resources

- 3.132. The Committee heard from several witnesses concerns around the resourcing, skills and training required for the new Territory Planning Authority to meet its role in supporting an outcomes-based planning system.²¹⁸
- 3.133. The Master Builders Association of the ACT expressed concerns about expertise of those in the planning system:

It will also require a lot more expertise to be involved in the planning system, both on the industry side and on the government side. I heard you asking the previous witnesses about landscape architects. I think that is just one example of the additional skills we will need in the planning office to properly operate a performance-based and outcomes-based system. We will require design professionals. We will require professionals with a whole range of expertise who

²¹⁷ Environmental Defenders Office, *Submission 9.1*, p 19.

²¹⁸ See, for example: Master Builders Association of the ACT, *Submission 2*, p 2; Name withheld, *Submission 61*, p 15; Suzanne Vaisutis-White, *Submission 33*, p 5; Planning Institute of Australia (ACT Division), *Submission 39*, p 19; Property Council of Australia (ACT Division), *Submission 58.1*, p 4.

are qualified to make these value judgements and to have discussions with professionals on the industry side, where there are points of disagreement or clarification that are needed.²¹⁹

- 3.134. For the Master Builders Association of the ACT, greater expertise was crucial for the new planning system to work optimally:

If we do not do this then all the benefits of the outcomes-based system will not be realised. The innovations that we are trying to encourage, the greater sustainability outcomes, which are very difficult to document in a rules-based, prescriptive system, will not be realised if we do not properly resource the planning directorate to be able to have those discussions and make those decisions.²²⁰

- 3.135. This was reinforced by Ms Georgina (Gina) Pinkas at the public hearing:

It needs a very skilled and a dedicated workforce to be able to have an outcomes-based planning system, and then it must be evaluated—because how do you know if you have achieved the outcome if you do not evaluate it?²²¹

- 3.136. The Planning Institute of Australia (ACT Division) expressed similar views in their submission on a need for appropriate skills and qualifications:

The ‘outcomes focus’ of the Draft Bill places emphasis on the skills and qualifications of the decision maker in their ability to make value-judgements about what a good planning outcome is, rather than reliance on numerical rules.²²²

- 3.137. Other submissions also highlighted the need for adequate resources, training, and skills for Territory Planning Authority staff.²²³

- 3.138. The Committee recognises that the outcomes focus of the new planning system will require new and different skill sets in the Territory Planning Authority, and therefore the Committee is in agreement that the ACT Government should ensure the Territory Planning Authority is fully resourced with staff, and that staff are provided with ongoing professional development and infrastructure such as software to meet new key performance indicators.

- 3.139. The Committee is also of the view that a regular review of staffing and other resources will ensure that the Territory Planning Authority continues to be able to fully support the new planning system.

²¹⁹ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 23.

²²⁰ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association of the ACT, *Committee Hansard*, 6 December 2022, p 24.

²²¹ Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 90.

²²² Planning Institute of Australia (ACT Division), *Submission 39*, p 23.

²²³ See, for example: Jane Goffman, *Submission 16.1*, p 1; Suzanne Vaisutis-White, *Submission 33*, p 6; Property Council of Australia (ACT Division), *Submission 58*, p 9 and *Submission 58.1*, pp 4, 16; Name withheld, *Submission 61*, pp 14–16; Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 93; Ms Kate Bradney, *Committee Hansard*, 6 December 2022, pp 93–94.

Recommendation 20

The Committee recommends that the ACT Government ensures the Territory Planning Authority has the sufficient staff, upskilling, training, and resourcing to support the new planning system, and that meaningful evaluation of resources is done on an annual basis.

Decision-making process

- 3.140. The Committee heard in evidence that it was unclear to residents where within the Territory Planning Authority and EPSDD decisions would be made, and which body reviews these decisions.
- 3.141. During the public hearing, Ms Fiona Carrick, President, Woden Valley Community Council, noted that as the Territory Planning Authority and EPSDD are not clearly separated, decision-making and review responsibilities are unclear: ‘Who is making these decisions? Who is reviewing these decisions?’²²⁴
- 3.142. In its submission, the Master Builders Association of the ACT noted that, due to the qualitative nature of consideration required by decision-makers under the Bill, ‘it can be foreseen that different decision-makers will very frequently reach different views about the “correct” decision’.²²⁵
- 3.143. The Committee is of the view that an organisational chart showing the hierarchy of decision-making within the Territory Planning Authority would assist the community in understanding how and where decisions on different aspects of planning in the ACT are made.

Recommendation 21

The Committee recommends that the ACT Government publish an organisational chart for the Territory Planning Authority.

Reviews and audits

Review of the full package

- 3.144. The Committee notes that the ACT Government introduced several amendments to the Bill from the consultation period of the draft Bill, to address key stakeholder concerns.
- 3.145. The Committee is encouraged by these amendments and believes that they will address some of the concerns that have been raised by stakeholders during the inquiry process.

²²⁴ Ms Fiona Carrick, President, Woden Valley Community Council, *Committee Hansard*, 6 December 2022, pp 57–58.

²²⁵ Master Builders Association of the ACT, *Submission 2.1*, p 14.

- 3.146. However, the Committee strongly encourages the ACT Government and EPSDD to monitor and evaluate the changes as they are implemented, to ensure that desired outcomes are delivered for the people of the Territory.
- 3.147. The Committee is of the view that the ACT Government should continue to consult and engage with stakeholder groups to gauge the impact of the reforms.

Recommendation 22

The Committee recommends that the ACT Government undertake a review of the operations of the Bill and the full package of the planning reform within two to three years of commencement.

Review by the ACT Civil and Administrative Tribunal

- 3.148. The Committee took evidence that the ACT Civil and Administrative Tribunal (ACAT) would need further resources and skills to review decisions under the new planning system, and that vexatious litigation could be a problem for stakeholders.²²⁶
- 3.149. The Environmental Defenders Office told the Committee that resourcing ACAT with members expert in planning matters could ‘definitely’ make a difference to the process, would presumably improve decisions, and potentially reduce appeals.²²⁷
- 3.150. Canberra Town Planning opined that better resourcing and expertise in ACAT could lead to more balanced decisions, describing the current situation as leading to a ‘statutory’ and ‘narrow interpretation’ of the requirements, saying:
- With respect, the Territory Plan does not get drafted with the same rigor that legislation gets drafted, so I see barristers and lawyers having a field day with the words on the page. Especially on an outcomes basis, I do not think that is particularly helpful.²²⁸
- 3.151. The Committee highlights the importance of continued and additional investment for the ACAT, to ensure that they have are equipped with adequate specialist resources and skills to review decisions under the new planning system.

²²⁶ See, for example: Name withheld, *Submission 11*, p 2; Mr Pieter van der Walt, Director – Senior Town Planner, Canberra Town Planning, *Committee Hansard*, 6 December 2022, p 33; Mr Eben Leifer, Deputy Convenor, Greater Canberra, *Committee Hansard*, 6 December 2022, pp 45–46.

²²⁷ Ms Melanie Montalban, Managing Lawyer, ACT, Environmental Defenders Office, *Committee Hansard*, 7 December 2022, p 122.

²²⁸ Mr Pieter van der Walt, Director – Senior Town Planner, Canberra Town Planning, *Committee Hansard*, 6 December 2022, p 35.

Recommendation 23

The Committee recommends that the ACT Government consider appropriate resourcing of the ACT Civil and Administrative Tribunal to ensure that it has the capacity, specialist resources and expertise to review decisions under the new planning system.

Controlled Activity Orders

- 3.152. Several submissions noted that frivolous or vexatious ACAT applications were the reason cited for removing from the Bill the ability for residents to apply for a Controlled Activity Order (CAO) but questioned whether this justification was sufficient.²²⁹
- 3.153. Penny Kendall noted in their submission that under the Bill, a member of the public may still lodge a complaint and the Territory Planning Authority can determine appropriate action, but there is no recourse for the complainant to seek a review at ACAT. Ms Kendall questioned whether the number of vexatious or frivolous applications was so big a problem as to require a change in legislation and argued that the lack of recourse to ACAT undermines the capacity for residents to ‘contribute to or monitor development and land use activities’.²³⁰
- 3.154. One submission described the public’s ability to apply for a CAO and potentially seek a review of the CAO decision at ACAT as ‘a safety net’ against ‘Government complacency, mistakes, poor oversight or even negligence and corruption’.²³¹
- 3.155. The Committee received a Freedom of Information release showing that six applications for CAOs had been made to the Territory Planning Authority by a person in the past three years, and of those, none were considered ‘frivolous, vexatious or not made honestly’.²³²
- 3.156. Ms Kate Bradney told the Committee that the removal of the ability to appeal a CAO decision at ACAT meant that there was no accountability for such decisions and that it ‘really does close the door on community advocacy’.²³³
- 3.157. Several submissions expressed similar concerns, arguing that the lack of ability to appeal at ACAT could allow mistakes to go unchecked and the community to have no remedy against illegal development activity that might fall through ‘bureaucratic cracks’.²³⁴
- 3.158. Some Members of the Committee are of the view that community members retain the right to access administrative or judicial remedies to apply for a CAO, for accountability and public scrutiny.

²²⁹ See, for example: Name withheld, *Submission 10*, p 2; Name withheld, *Submission 11*, p 2; Name withheld, *Submission 14*, p 2; Penny Kendall, *Submission 17*, p 1.

²³⁰ Penny Kendall, *Submission 17*, pp 1–2.

²³¹ Name withheld, *Submission 14*, p 2.

²³² Name withheld, *Exhibit 18*, p 2.

²³³ Ms Kate Bradney, *Committee Hansard*, 6 December 2022, p 89.

²³⁴ See, for example: Name withheld, *Submission 5*, pp 1–2; Name withheld, *Submission 10*, p 1; Name withheld, *Submission 11*, p 2; Name withheld, *Submission 14*, pp 1–2.

Recommendation 24

The Committee recommends that the ACT Government amend the Bill to enable any person(s) to retain their rights to access administrative or judicial remedies to enforce a breach, or anticipated breach, of the Bill, and to reinsert the ability for community members to apply for a Controlled Activity Order.

Third party reviews

- 3.159. The Committee heard concerns from several submitters and witnesses regarding limitations on third-party reviews of DAs at ACAT under the Bill.²³⁵
- 3.160. In their submission, Lake Burley Griffin Guardians described the exemption of Territory Priority Projects (TPPs) from third party review as ‘highly inappropriate’, as this would ‘unnecessarily and severely limit the right of third parties from an ACAT review of Territory Priority Projects developments on land in various critical areas’.²³⁶
- 3.161. North Canberra Community Council said that the exemption of TPPs from third party review ‘completely shuts out the views of community regarding major developments’.²³⁷
- 3.162. In their submission, the Environmental Defenders Office argued that regular monitoring and evaluation of development is critical to ensure that desired outcomes are being achieved in an outcomes-focussed system, and that limiting third party reviews in ACAT would limit ACAT’s independent oversight of development.²³⁸
- 3.163. The Environmental Defenders Office further noted that judicial review may be possible when third party merits review is not available through ACAT. However, this process can be lengthy, complex, and technically challenging. It would be inaccessible to many, while in the context of planning decisions, the remedies available through ACAT merit review are ‘far more effective’.²³⁹

Outcomes review

- 3.164. The Committee heard in evidence that a regular review of outcomes is necessary to confirm that the Bill is meeting its intentions.²⁴⁰
- 3.165. Dr Martha Kinsman told the Committee that there should be ‘an ex-post evaluation of an estate’. She cited as an example the development of Lawson stages 1 and 2:

²³⁵ See, for example: Environmental Defenders Office, *Submission 9*, p 10 and *Submission 9.1*, pp 53–54; Margaret Henderson, *Submission 15*, p 2; Lake Burley Griffin Guardians, *Submission 28*, p 6; Suzanne Vaisutis-White, *Submission 33*, p 3; North Canberra Community Council, *Submission 40*, p 2.

²³⁶ Lake Burley Griffin Guardians, *Submission 28*, p 6.

²³⁷ North Canberra Community Council, *Submission 40*, p 2.

²³⁸ Environmental Defenders Office, *Submission 9.1*, p 17.

²³⁹ Environmental Defenders Office, *Submission 9.1*, pp 54–55.

²⁴⁰ See, for example: Gina Pinkas, *Submission 57*, pp 3–4; Gina Pinkas, *Exhibit 9*, p 3; Mr Bill Gemmell, Chair, Weston Creek Community Council, *Committee Hansard*, 6 December 2022, p 64; Dr Martha Kinsman, *Committee Hansard*, 6 December 2022, p 84.

If there had been a full evaluation of stage 1 Lawson, I do not think that they would have the same planning problems or anticipate the same sort of planning design as they are for Lawson stage 2.²⁴¹

- 3.166. Weston Creek Community Council agreed, arguing that there are many cases where intentions have not been delivered:

I can give you mountains of examples where what is planned might be a stallion but what is delivered is a zebra.²⁴²

- 3.167. Ms Gina Pinkas noted that assessment of outcomes can be ‘subjective, vaguely expressed and variously interpreted’, increasing the likelihood of appeals to ACAT.²⁴³

- 3.168. During the public hearing on 6 December 2022, Ms Pinkas argued that it is important to build an evaluation of the new process into the Bill:

It needs a very skilled and a dedicated workforce to be able to have an outcomes-based planning system, and then it must be evaluated—because how do you know if you have achieved the outcome if you do not evaluate it?²⁴⁴

- 3.169. The Committee is of the view that the Bill should include strong compliance monitoring, reporting requirements and evaluation, and recommend the ACT Government engage with an independent audit of planning decisions and new developments annually, to examine whether desired outcomes of the Bill are being met.

Recommendation 25

The Committee recommends that the ACT Government undertake an independent review of planning decisions and new developments annually, to examine whether they are meeting the Bill’s intentions.

Compliance and enforcement

- 3.170. Evidence received by the Committee suggested that stronger compliance and enforcement mechanisms were required in the Bill to ensure that environmental impacts of development were monitored.²⁴⁵

- 3.171. The Environmental Defenders Office noted that the Bill does not restrict approval of DAs for proposals with ‘unacceptable’ climate change impacts, and argued that the Bill should ‘impose a duty on decision-makers to refuse development applications for development proposals’ with unacceptable climate risks or risk to the environment, and should allow

²⁴¹ Dr Martha Kinsman, *Committee Hansard*, 6 December 2022, p 84.

²⁴² Mr Bill Gemmell, Chair, Weston Creek Community Council, *Committee Hansard*, 6 December 2022, p 64.

²⁴³ Gina Pinkas, *Submission 57*, p 3.

²⁴⁴ Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 90.

²⁴⁵ See, for example: Environmental Defenders Office, *Submission 9* pp 7–8 and *Submission 9.1*, pp 31–32, 39–41; Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2022, p 133; Mr Stephen Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 104.

decision-makers to set conditions in relation to climate change or greenhouse gas emissions.²⁴⁶

- 3.172. During the public hearing on 7 December 2022, Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, told the Committee that her office had identified issues with assessment of DAs in relation to environmental impact:

... when applications were made and they were being assessed in terms of these water sensitive urban design outcomes, there was not inherently the technical expertise and the time available to assess those to the level that they needed to be to determine whether those applications would meet requirements. So that was one aspect. We also identified issues around compliance and enforcement in terms of sediment and erosion controls around greenfield developments and also within the infill environment.²⁴⁷

- 3.173. Dhawura Ngunnawal Caring for Country Committee called for post-development assessment of ecological impacts:

Beforehand there is an ecological study done and there is a cultural study done recording everything. But after something is developed, what checks are in place to ensure that the ecological system has not been damaged by the development? That includes the native plants and the animals that were there, and just making sure that they are still surviving for us. As you know, there are a lot of native plant foods out there. Some of our people may be accessing those and we need to make sure that they are still getting access. We need to make sure that the rivers do not run dry because of something that we have done.²⁴⁸

Recommendation 26

The Committee recommends that the ACT Government:

- introduce amendments to the Bill to include strong compliance and enforcement mechanisms available for development proposals that are likely to contribute to climate change through greenhouse gas emissions and that are likely to have a significant adverse environmental impact; and
- ensure that after each major development is complete, an inspection is conducted to ensure that its impacts were as expected.

²⁴⁶ Environmental Defenders Office, *Submission 9.1*, pp 31–32, 39.

²⁴⁷ Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2022, p 133.

²⁴⁸ Mr Stephen Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 104.

Public land

- 3.174. The Committee heard concerns in evidence about the use and management of public land under the Bill.²⁴⁹
- 3.175. Ms Gina Pinkas argued that '[l]and classified as Public Land in the Territory plan was classified as such to preserve the public interest in the area', and that decisions on this land should require community participation.²⁵⁰
- 3.176. Ms Pinkas also told the Committee that on land classified as public land under the Territory Plan, there had been 'a sneaky little incursion' of car parks and other usage, and that the Bill needed to be strengthened to prevent further such usage.²⁵¹
- 3.177. The Conservation Council ACT Region called for a review of public land use categories and management objectives applicable to land that has conservation value, in order to protect the land and improve biodiversity outcomes.²⁵²
- 3.178. In their submission, Weston Creek Community Council argued that changes to the provisions for public land, such as changing the purpose, moving the boundaries, or deciding that the area is no longer public land, should 'not be taken lightly'. The Council noted that public land contributes to the health and well-being of residents and called for these areas to be protected and maintained.²⁵³
- 3.179. The Committee is of the view that the use and management objectives of public land requires reviewing, so as to protect urban public land from being left to erode, and that there need to be stronger provisions in the Bill to protect public land objectives.

Review of the Territory Plan

- 3.180. In its submission, the Property Council of Australia (ACT Division) noted that the Bill requires the Minister for Planning and Land Management to decide whether the Territory Plan should be reviewed, every five years.²⁵⁴
- 3.181. The Property Council of Australia (ACT Division) indicated support for a regular review of the Territory Plan and its ability to achieve its objectives.²⁵⁵
- 3.182. The Committee considers that, when reviewing the Territory Plan, the Minister also review whether the Territory Plan is meeting current community and building industry expectations, as well as emerging trends and priorities for the community.

²⁴⁹ See, for example: Conservation Council ACT Region, *Submission 23*, pp 31–32; Weston Creek Community Council, *Submission 38*, p 5 and *Submission 38.1*, pp 11–12; Gina Pinkas, *Submission 57*, pp 7–8; Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 90.

²⁵⁰ Gina Pinkas, *Submission 57*, p 7.

²⁵¹ Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 90.

²⁵² Conservation Council ACT Region, *Submission 23*, pp 31–32.

²⁵³ Weston Creek Community Council, *Submission 38.1*, pp 11–12.

²⁵⁴ Property Council of Australia (ACT Division), *Submission 58.1*, p 14.

²⁵⁵ Property Council of Australia (ACT Division), *Submission 58.1*, p 14.

Legislation amendments

Minor and technical variations

3.183. In their submission, Ms Gina Pinkas advised the Committee that ‘technical variations’ to the Territory Plan were originally intended to allow for small changes, such as a boundary change to allow for a bicycle path, without the drawn-out process of a full variation. Technical variations did not initially allow policy variations.²⁵⁶

3.184. Ms Pinkas outlined that this had changed in practice:

However, an abuse of the technical variation process occurred when changing in the Plan the definition of community land, which allow supported housing (but not other housing), to change to include social housing. This was undertaken as a technical variation. So large areas of land were then able to be used for social housing which were not previously available. Social housing is not “supported housing” which requires onsite support for residents. The community and the Assembly were not aware of this as it was done as technical variation. While the outcome may be beneficial, the fact that no one other than the Government knew nor had the chance to comment, was not in keeping with the intent of technical variations.²⁵⁷

3.185. Ms Pinkas noted that the Bill now allows for technical variations to be called ‘minor variations’, only some of which require consultation, and none of which require Legislative Assembly scrutiny. She argued that the provisions for minor variations are not sufficiently limited and allow for encroachment on adjoining facilities.²⁵⁸

3.186. During the public hearing on 6 December 2022, Ms Pinkas told the Committee that such variations should be limited to technicalities, and other variations should be referred to the Legislative Assembly for scrutiny:

... that is why we have the Assembly. If we vote in people that allow these things to happen, then that is our fault. But, if they do not know about it, then it is not their fault or our fault.²⁵⁹

3.187. In response to a Question on Notice regarding minor technical amendment and whether there are guidelines in place as to what is a minor or technical amendment, Minister Gentleman responded ‘no’, and that:

Minor plan amendments or technical variations are required to be consistent with the policy of the Territory Plan and this has been the case since such variations were first introduced through the Planning and Development Act 2007.

²⁵⁶ Gina Pinkas, *Submission 57*, p 6.

²⁵⁷ Gina Pinkas, *Submission 57*, p 6.

²⁵⁸ Gina Pinkas, *Submission 57*, pp 6–7.

²⁵⁹ Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 92.

Provisions in the Planning Bill 2022 (and the current Planning and Development Act 2007) are adequate for this purpose'.²⁶⁰

- 3.188. The Committee is of the view that minor and technical variations to the Territory Plan should not include policy changes, and should be limited to small technical changes. The Committee agrees that clear guidelines defining the limits of these variations should be made available.

Recommendation 27

The Committee recommends that the ACT Government amend the Bill to ensure that minor and technical variations to the Territory Plan are defined so that they do not include policy decisions, and ensure there are publicly available guidelines about the interpretation of 'minor' or 'technical', and that these are genuinely minor and technical variations.

Significant developments

- 3.189. The Committee noted concerns raised in evidence that significant developments are not required under the Bill to achieve good planning principles, including climate resilience.²⁶¹
- 3.190. In their submission, Canberra Planning Action Group argued that intensive development in Gungahlin and on Northbourne Avenue contravened good planning principles, including climate resilience, set out in the ACT Spatial Plan. Canberra Planning Action Group further argued that intensive development contributes to the heat island effect by creating a vicious cycle of high air conditioning use, small block sizes, and little room for vegetation.²⁶²
- 3.191. In their submission, the Planning Institute of Australia (ACT Division) expressed support for the principles of good planning as set out in the Bill. However, they suggested that the effect of the principles could be enhanced by ensuring they were embedded into outcomes-focussed sections of the Bill such as 'Territory Plan, Development Assessment, EIS, Significant Development, Territory Priority Projects, Granting of Leases'.²⁶³
- 3.192. The Planning Institute of Australia (ACT Division) also noted that there is no direct requirement in the Bill for significant developments to achieve good planning principles such as 'climate resilience, or knowledge, culture and tradition of the traditional custodians',²⁶⁴ and recommended that '[t]here should be a requirement for a Significant Development to demonstrate how the Good Planning Principles are achieved'.²⁶⁵
- 3.193. The Committee is of the view that the ACT Government should ensure that significant developments are required to achieve good planning principles including climate resilience.

²⁶⁰ Mr Mick Gentleman MLA, *answer to QON 10: Minor technical variations*, 9 December 2022 (received 19 December 2022), p 1.

²⁶¹ See, for example: Canberra Planning Action Group, *Submission 30*, p 4; Planning Institute of Australia (ACT Division), *Submission 39*, pp 1–2, 4, 24.

²⁶² Canberra Planning Action Group, *Submission 30*, p 4.

²⁶³ Planning Institute of Australia (ACT Division), *Submission 39*, pp 1–2.

²⁶⁴ Planning Institute of Australia (ACT Division), *Submission 39*, p 24.

²⁶⁵ Planning Institute of Australia (ACT Division), *Submission 39*, p 4.

Recommendation 28

The Committee recommends that the ACT Government amend the Bill to require that significant developments must achieve good planning principles including climate resilience.

Principles of good planning

- 3.194. A concern raised by the Planning Institute of Australia (ACT Division) was ensuring that the planning principles in the Bill would be applied to planning and scoping documents:

From our point of view, we support those statements at the start that talk about what good principles are, and we think they are all fine. But in the day-to-day working application of the legislation and the various components that follow from the legislation, such as the Territory Plan, those introductory principles and objects are often forgotten.

We have been working with the statement of strategic directions in the current Territory Plan, which are embedded right at the start of it, but—as a practising planner over the last 10 or 15 years—they do not really have any application in the day-to-day implementation and outcomes that appear on the ground.

So what we are saying here is that what we have is a good starting point. If we can then follow them through, either in their entirety or in the relevant parts of them being expressed again in the various sections, like the Territory Plan or the development assessment process, it would make a stronger end result—that those outcomes we are achieving on the ground are achieving those good planning principles and they have not been forgotten through that development process.²⁶⁶

- 3.195. For Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), this was important in aiding developers in demonstrating to the Territory Planning Authority and the community how a development fulfils and supports the planning principles:

So, there is one area where they could be explicit at that point and say, “If you are going to proceed with a Territory Plan, or privately-initiated Territory Plan, variation you must say to the community through that planning report exactly how this outcome, that will be the end result of that Territory Plan variation, will achieve each and every one of those good planning principles.”²⁶⁷

- 3.196. The Committee is therefore of the view that the Bill needs to be amended to more fully embed the application and cascading of the principles of good planning to planning and

²⁶⁶ Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 6 December 2022, pp 10–11.

²⁶⁷ Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 6 December 2022, p 12.

scoping documents, including individual Development Applications, developer-led Territory Plan Variations, and Environmental Impact Statements.

Recommendation 29

The Committee recommends that the ACT Government amend the Bill to provide a clearer legislative link to ensure that the Territory Planning Authority ensures the principles of good planning are applied explicitly to planning and scoping documents including Development Applications, developer-led Territory Plan variations, and Environmental Impact Statements.

Housing affordability

- 3.197. The Committee heard that given the increase in poverty levels, pressures due to costs of living and housing shortages, the Bill should do more to address housing affordability:

Currently, the ACT has a shortfall of more than 3,000 social housing dwellings, while 1,600 people in the ACT are homeless according to data compiled by Everybody's Home.

As 31 October 2022, there were 3,132 households on the ACT's social housing waiting list. The average wait time for standard housing is now over 4.7 years (1743 days). The ACT also has the highest rate of rental stress for lower-income private renters of any Australian jurisdiction (73% compared with 50% nationally). Meanwhile, the number of public housing dwellings has decreased. As we note in our 2022 Cost of Living Report, the proportion of social housing households has steadily declined over the last ten years. Between 2020 and 2021, the number of dwellings decreased by 164 households, and this number is lower than a decade ago in 2012 (11,328), and its peak at 11,435 households in 2017.²⁶⁸

- 3.198. Under the ACT Housing Strategy, Goal 1 'An Equitable, Diverse and Sustainable Supply of Housing for the ACT Community', a key objective is to set a 15 percent target for social and affordable housing. Under this strategy, the ACT Government has committed to release 15 percent of its annual indicative land release program to affordable community and public housing with implementation from the 2019-20 program onwards.²⁶⁹
- 3.199. The Committee heard from the ACT Council of Social Service that this should be facilitated in the Bill:

To facilitate this, the Bill needs to include provisions that:

- Ensure restrictions placed on assigned plots for release are sufficient to produce valuations significantly below market, or for revision to be made to the Planning Act to allow discounted land sales for defined social outcomes. This will allow for community housing providers to take up restricted land release offers.

²⁶⁸ ACT Council of Social Service, *Submission 63*, p 3.

²⁶⁹ ACT Government, Homes and Housing, *ACT Housing Strategy*, <https://www.act.gov.au/homes-housing/act-housing-strategy/vision-and-goals/goal-1>, (accessed 15 December 2022).

- The government could also consider retaining an equity stake in these properties which can be realised at a future date when sold, reducing the impact on the government's balance sheet from this type of investment.²⁷⁰

3.200. The Committee heard that church-held land could be re-zoned to provide social and affordable housing.²⁷¹

3.201. The Committee also heard that there were concerns about planning for social housing with respect to adequate quality and quantity:

One of the things we found is that what is happening now, what we see is happening, is that Housing ACT are trying to bang as many dwellings onto single blocks as they can—and this is also relevant to the ACTCOSS thing. What is happening is that the public housing people are being treated as second-class citizens.²⁷²

3.202. The Committee also heard that when public housing is demolished, 10 percent of the replacement units should be social housing:

... the first thing I would say is that if you knock down social housing flats, you should mandate that 10 per cent of the replacement units are social housing, which we are told will happen, but it never does—for example, the Red Hill flats.²⁷³

3.203. Housing affordability was also impacted by land banking occurring under the leasehold system resulting in an increase in land values:

The problem with that is that people are land banking and using land for other purposes rather than for the purpose of building on the block.

In the good old days—as she says as an older person—you could not sell land without having something built on it. I know that we have second agencies that sell land. It does not matter. You cannot trade in land. That is the point. One of the major facets of the leasehold system was that you lease the land and you had to develop the land. Under the new system it is a moot point where the point of sale is, because we have got the different agencies. But to be able to sell land willy-nilly, which is what people are doing, is really causing an increase in the value of land and, therefore, the cost to the people that need the land to live on. That is why I am recommending that we have an inquiry into the leasehold system and how it fits into the new planning systems. I think that is really important.²⁷⁴

3.204. In response to a Question on Notice regarding housing affordability, Minister Gentleman stated:

²⁷⁰ ACT Council of Social Service, *Submission 63*, p 4.

²⁷¹ ACT Council of Social Service, *Submission 63*, p 4.

²⁷² Dr David Denham AM, President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2022, p 66.

²⁷³ Ms Sue Tongue, Vice President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2022, p 66.

²⁷⁴ Ms Gina Pinkas, *Committee Hansard*, 6 December 2022, p 91.

Section 10(2)(b) of the Planning Bill 2022 provides for urban areas to include a range of high-quality housing options with an emphasis on living affordability.²⁷⁵

- 3.205. The Committee is of the view that the ACT Government implement clear provisions in the Bill in relation to housing affordability in the principles of good planning.

Recommendation 30

The Committee recommends that the ACT Government amend the Bill to contain a clear provision on housing affordability in principles of good planning.

Definitions

- 3.206. The lack of clear definitions for the terms ‘planning outcome’, ‘outcomes-focussed’ and ‘good planning outcome’ was examined by the Committee.
- 3.207. A similar issue was also identified in subparagraph 187(2)(c)(ii) of the Bill. The subparagraph currently states that one of the criteria for the Chief Planner or Minister to approve a DA is that it will ‘provide substantial public benefit’. However, no definition or explanation of ‘substantial public benefit’ is provided in the Bill.²⁷⁶
- 3.208. The Chair questioned the ability for people to have certainty regarding the terminology used in the Bill and noted the number of concerns expressed to the Committee.²⁷⁷
- 3.209. When questioned about the lack of clarity in relation to the terminology used in the Bill, Mr Ben Ponton, Director-General, EPSDD, responded by stating that they have the framework in the Bill and have articulated it from a legal perspective. Mr Ponton then commented that the framework will be articulated in words and ‘will have support of photographs, diagrams, and images.’²⁷⁸
- 3.210. Mr James Bennett, Executive Branch Manager, Building Reform, Housing and Design Services, EPSDD, added that the ACT Government have provided an umbrella definition within subclause 10(1) of the Bill.²⁷⁹ Mr Ponton stated that they have articulated the defining terms in the legislation and ensuring there is a connection from policy documents through to the Territory Plan.²⁸⁰
- 3.211. Subclause 10(1) of the Bill states that to achieve good planning outcomes, a person must consider the four objects of the Bill and the principles of good planning in developing planning strategies, plans and policies. A definition from paragraph 10(2)(a) is included below:

²⁷⁵ Mr Mick Gentleman MLA, *answer to QON 13: Housing affordability*, 9 December 2022 (received 19 December 2022), p 1.

²⁷⁶ Planning Bill 2022, subpara 187(2)(c)(ii).

²⁷⁷ Ms Jo Clay MLA, Chair, Standing Committee on Planning, Transport and City Services, *Committee Hansard*, 7 December 2022, p 174.

²⁷⁸ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2022, p 174.

²⁷⁹ Mr James Bennett, Executive Branch Manager, Building Reform, Housing and Design Services, EPSDD, *Committee Hansard*, 7 December 2022, p 174.

²⁸⁰ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2022, pp 174–175.

(2) In this Act:

activation and liability principles means the following:

(a) planning and design should support diverse economic and social activities, including through promoting different but compatible uses for buildings and other areas.²⁸¹

3.212. The Environmental Defenders Office stated that words and phrases should be defined in legislation and not policy documents.²⁸²

3.213. In particular, the Environmental Defenders Office argued that outcomes-focused provisions need to be appropriately balanced with mandatory provisions and technical specifications:

The current system, I understand, is quite prescriptive and this bill seems to fall at the other end of the spectrum, being quite subjective and flexible. I think there should be some balancing between the two and that there can be mandatory rules within the bill or regulations.²⁸³

3.214. The Committee views that the ACT Government has not adequately defined key terminology in the Bill. The Committee is of the opinion that it is not appropriate for key terminology to be omitted from the Bill and that amendments be made to explicitly define what a 'planning outcome', 'outcomes-focused', 'good planning outcome' and 'substantial public benefit' means.

3.215. The Committee urges for clarity to be provided to industry, community, and review bodies such as ACAT. The Committee questions how, as the Bill currently stands, individuals and groups are expected to correctly interpret or meet the criteria if they are not clearly defined and are subjective in nature.

Recommendation 31

The Committee recommends that the ACT Government amend the Bill to ensure greater clarification is provided to terminology such as 'planning outcome', 'outcomes-focussed' and 'good planning outcome', as well as defining 'substantial public benefit' in paragraph 187(2)(ii).

Variations in terminology

3.216. Further, the Committee examined the issue of inconsistent terminology when referencing community consultation throughout the Bill.

²⁸¹ Planning Bill 2022, para 10(2)(a).

²⁸² Ms Melanie Montalban, Managing Lawyer ACT, Environmental Defenders Office, *Committee Hansard*, 7 December 2022, pp 123–124.

²⁸³ Ms Melanie Montalban, Managing Lawyer ACT, Environmental Defenders Office, *Committee Hansard*, 7 December 2022, p 124.

- 3.217. Peter Johns identified in his submission that three distinct terms are used to refer to community consultation in the Bill, namely: community participation (subclause 7(1)), consultation (clause 11), and public consultation (subclause 36(3)):

It is not clear why different terms have been used or whether different meanings/processes proposed.²⁸⁴

- 3.218. The Committee is of the view that consistent terminology should be used throughout the Bill for lexical congruency, as this makes for ease in document navigation and helps avert potential ambiguities or misunderstandings within the Bill.

Recommendation 32

The Committee recommends that the ACT Government ensure that the use of terminology referencing community consultation is consistent throughout the Bill.

Territory Planning Authority and Territory Priority Projects

Declaration of a Territory Planning Project

- 3.219. Several submissions raised concerns in relation to the Bill removing the requirement for sufficient community consultation as a condition for a declaration of a Territory Planning Project:²⁸⁵

There is no need for any projects to be fast-tracked and so be immune from the normal decision-making checks and balances, whether these be environmental or otherwise, to which other/all developments are subject.²⁸⁶

Sufficient community consultation must be mandated. [The Weston Creek Community] Council does not support [...] the suggestion that the Minister can declare a proposal a territory priority project without explicit criteria or consultation as it stands in the draft.²⁸⁷

- 3.220. The consultation draft to the Bill included provisions for declarations of TPPs requiring satisfaction of all four criteria points, including (d) which covers sufficient community consultation:

(1) The Minister may declare that a development proposal is a territory priority project (a territory priority project declaration) if the Minister is satisfied that—

(a) the proposal is of significant benefit to the people of the ACT; and

²⁸⁴ Peter Johns, *Submission 34.1*, p 3.

²⁸⁵ See, for example: Lake Burley Griffin Guardians, *Submission 28*, p 6; Weston Creek Community Council, *Submission 38.1*, p 10.

²⁸⁶ Lake Burley Griffin Guardians, *Submission 28*, p 6.

²⁸⁷ Weston Creek Community Council, *Submission 38.1*, p 10.

- (b) the proposal is for critical public infrastructure or facilities; and
- (c) the proposal is for development that is time critical; and
- (d) there has been sufficient community consultation about the proposal.²⁸⁸

3.221. In comparison, the Bill as presented does not require ‘sufficient community consultation’, but for any one of (a) to (c) to be satisfied:

(1) The Chief Minister and Minister may jointly declare that a development proposal is a territory priority project (a territory priority project declaration) if the Chief Minister and Minister are satisfied that the proposal—

- (a) would achieve a major government policy outcome that is of significant benefit to the people of the ACT; or
- (b) would substantially facilitate the achievement of the desired future planning outcomes set out in the planning strategy, a relevant district strategy, the territory plan or any relevant zone; or
- (c) is for significant infrastructure or facilities, that are of significant benefit to the people of the ACT.²⁸⁹

3.222. The Committee is concerned that the current provisions in the Bill as presented would not require the ACT Government to undertake community consultation for a TPP.

Recommendation 33

The Committee recommends that the ACT Government amend subclause 215(1) of the Bill to include ‘(d) has undergone sufficient community consultation’.

Territory Priority Project as a notifiable instrument

- 3.223. In its submission, Conservation Council ACT Region stated that the ‘potentially far-reaching’ impacts of a TPP decision and the exclusion of the possibility of an administrative appeal ‘warrants a higher level of accountability’.²⁹⁰
- 3.224. Subclause 215(2) of the Bill states that a TPP declaration is a notifiable instrument.²⁹¹ A notifiable instrument is a statutory instrument that, unlike a disallowable instrument, does not have to be presented to the Assembly.
- 3.225. Evidence received by the Committee from Weston Creek Community Council and Inner South Canberra Community Council shows that there are concerns for scrutiny if TPPs remain as notifiable instruments:²⁹²

²⁸⁸ Planning Bill 2022 (consultation draft), subcl 212(1).

²⁸⁹ Planning Bill 2022, subcl 215(1).

²⁹⁰ Conservation Council ACT Region, *Submission 23*, p 30.

²⁹¹ Planning Bill 2022, subcl 215(2).

²⁹² Weston Creek Community Council, *Submission 38.1*, p 10; Inner South Canberra Community Council, *Submission 45.1*, p 2.

The [ACT] Legislative Assembly should have a greater role in scrutinising the planning system, including by making the Planning Strategy, Territory Plan, District Strategies and Territory Priority Projects subject to Disallowable Instruments rather than Notifiable Instruments.²⁹³

3.226. The Committee however received opposing evidence from Minister Gentleman in response to a Question on Notice regarding Territory Priority Projects that:

A disallowance process presents inherent uncertainty as to the legal status of a project as it proceeds through the development application process and this was not considered to be in the public interest.²⁹⁴

3.227. Some Members of the Committee are of the view that the ACT Government consider amending subclause 215(2) so that a TPP declaration is a disallowable instrument and subject to consideration by the ACT Legislative Assembly for public scrutiny as well as parliamentary oversight.

Recommendation 34

The Committee recommends that the ACT Government consider amending subclause 215(2) of the Bill to ensure that a Territory Priority Project declaration is a disallowable instrument. In making this recommendation, the Committee notes a change of this type could be considered a significant change in planning practice.

Recognition of First Nations people

Consultation

3.228. Evidence received by the Committee supported stronger recognition of Indigenous culture and traditional owners in the Bill²⁹⁵, with one urban planner's submission describing the government's engagement on this issue as a 'tokenistic superficial approach'.²⁹⁶

3.229. In its submission, the Environmental Defenders Office remarked that:

Protecting heritage, including Aboriginal heritage, and promoting and facilitating the knowledge, culture and tradition of traditional custodians in s 7(3) should itself be recognised as an object of the Bill in s 7(1).²⁹⁷

3.230. The Environmental Defenders Office argued that 'in order to promote distributive justice, the Bill must promote the right of First Nations in the ACT to speak on behalf of their country and to protect culturally significant places and objects, both tangible and

²⁹³ Inner South Canberra Community Council, *Submission 45.1*, p 2.

²⁹⁴ Mr Mick Gentleman MLA, *answer to QON 14: Territory Priority Projects*, 9 December 2022 (received 19 December 2022), p 1.

²⁹⁵ See, for example: Ginninderra Falls Association, *Submission 4*, p 1; Name withheld, *Submission 7*, p 1; Conservation Council ACT Region, *Submission 23*, p 9; Reid Residents' Association, *Submission 31*, p 5; Planning Institute of Australia (ACT Division), *Submission 39*, p 29; Inner South Canberra Community Council, *Submission 45*, p 2.

²⁹⁶ Jane Goffman, *Submission 16.1*, p 3.

²⁹⁷ Environmental Defenders Office, *Submission 9.1*, p 18.

intangible, from the impacts of development’,²⁹⁸ noting that ‘[t]here are no provisions in the Bill that require consultation with First Nations at any stage of the reformed planning system’,²⁹⁹ and that ‘the ACT Government’s obligation to consult with First Nations before taking or approving any measures that may affect their country includes an obligation to obtain their free, prior and informed consent’.³⁰⁰

- 3.231. During the public hearing on 6 December 2022, Dr Caroline Hughes, Co-Chair, Dhawura Ngunnawal Caring for Country Committee, noted that consultations on the Bill had been ‘extensive’, and that consultation had also included the United Ngunnawal Elders Council and the Winnunga Ngunnawal Language Group. She described the consultation as having been done in a culturally sensitive way, based on truth telling, with the opportunity for all to have a voice.³⁰¹
- 3.232. However, she also clarified that, ‘we are being consulted but our advice is not being taken on; it is just tokenistic.’³⁰²
- 3.233. Ms Roslyn Brown, Committee member, Dhawura Ngunnawal Caring for Country Committee, similarly observed that while Indigenous groups are consulted, they are not included in panels working on bills.³⁰³
- 3.234. Dr Hughes concurred, saying that having a First Nations and Ngunnawal voice at the table in the drafting of bills would be ‘a step in the right direction of the Makarrata statement: a voice, treaty and truth’.³⁰⁴
- 3.235. Ms Mary Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, added that ‘Ngunnawal needs to be recognised as rights holders, not just stakeholders’.³⁰⁵
- 3.236. Mr Stephen Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, observed that:

...sometimes you need more than one person on a panel. To us, it is important to have both a male and a female, because there are female sensitive areas that we need acknowledged as well and we, as male, cannot go and assess those sites and comment on those.³⁰⁶

²⁹⁸ Environmental Defenders Office, *Submission 9.1*, p 40.

²⁹⁹ Environmental Defenders Office, *Submission 9.1*, p 41.

³⁰⁰ Environmental Defenders Office, *Submission 9.1*, p 43.

³⁰¹ Dr Caroline Hughes, Co-Chair, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 96.

³⁰² Dr Caroline Hughes, Co-Chair, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 99.

³⁰³ Ms Roslyn Brown, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 97.

³⁰⁴ Dr Caroline Hughes, Co-Chair, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 97.

³⁰⁵ Ms Mary Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 97.

³⁰⁶ Mr Stephen Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 98.

- 3.237. Members of the Dhawura Ngunnawal Caring for Country Committee expressed a desire to have more First Nations people employed across all levels of government,³⁰⁷ with recruitment done in a purposeful way:

...you would be employing people like that to a specific role and the role would be around their cultural connection and the spirituality of the land. Therefore, that needs to be part of the position description, rather than a list of what inherently has been white man position descriptions. It has been, "You've got to be able to do this, this, this and that." These people have their traditional knowledge and the position description needs to fit that...³⁰⁸

- 3.238. The Committee acknowledges that although the ACT Government has engaged in consultation with First Nations people, this consultation has not provided outcomes to the satisfaction of local First Nations people and community groups.

Recommendation 35

The Committee recommends that the ACT Government ensure First Nations peoples are meaningfully consulted in the ACT Planning System Review and Reform Project.

Cultural immersion training

- 3.239. Ms Mudford suggested that planning staff and decision-makers should undergo Ngunnawal cultural immersion³⁰⁹, which Dr Hughes described a stronger form of cultural awareness training, to ensure respectful engagement with Ngunnawal people and cultural competency.
- 3.240. Dr Hughes noted that the development industry would also benefit from such training. She acknowledged that 'there is a real thirst out there for more knowledge' but also that the Ngunnawal people developing and creating such a multi-day immersion program would need remuneration, as 'we cannot do it for free'.³¹⁰
- 3.241. In response to a Question on Notice on immersion training for government staff, Minister Gentleman acknowledged that:

Training for officers in administering the Bill is currently being developed. The Dhawura Ngunnawal Caring for Country Committee's suggestion about immersion training will be considered as part of this process.³¹¹

³⁰⁷ Dr Caroline Hughes, Co-Chair, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 102.

³⁰⁸ Mr Stephen Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 102.

³⁰⁹ Ms Mary Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 103.

³¹⁰ Dr Caroline Hughes, Co-Chair, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, pp 103–104.

³¹¹ Mr Mick Gentleman MLA, *answer to QON 2: DNCCC*, 9 December 2022 (received 19 December 2022), p 2.

- 3.242. The Committee sees value in such training for decision makers and believes that it would support the aims of Recommendation 1 to strengthen the representation of First Nations people in planning decisions for the Territory.

Recommendation 36

The Committee recommends that the ACT Government explore training for staff in the Territory Planning Authority and statutory planning team to attend government-funded immersion training and learn how to better work with First Nations people in the ACT and how to view the land as First Nations land; and that Government develop guidelines for consultation with First Nations, which should be culturally safe and developed through consultation with First Nations people and communities.

Cultural heritage

- 3.243. Ms Mudford remarked that Ngunnawal should be consulted about intangible values as well as tangible values associated with heritage sites,³¹² and that proponents and developers sometimes make decisions against ACT Heritage advice.³¹³
- 3.244. Mr Mudford noted that before development is undertaken, ecological and cultural studies are conducted, but questioned what checks are in place after development to ensure that the ecological system has not been damaged:

...after something is developed, what checks are in place to ensure that the ecological system has not been damaged by the development? That includes the native plants and the animals that were there, and just making sure that they are still surviving for us. As you know, there are a lot of native plant foods out there. Some of our people may be accessing those and we need to make sure that they are still getting access. We need to make sure that the rivers do not run dry because of something that we have done.³¹⁴

- 3.245. The Committee is of the view that the ACT Government has a responsibility to recognise the cultural and spiritual needs of First Nations people within the new planning system, and to protect their cultural heritage for the benefit of all.

Recommendation 37

The Committee recommends that the ACT Government amend the objects of the Bill to recognise the cultural and spiritual connections held by First Nations people in the ACT and amend clause 9 to elevate considerations of cultural heritage.

³¹² Ms Mary Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 100.

³¹³ Ms Mary Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, pp 100–101.

³¹⁴ Mr Stephen Mudford, Committee member, Dhawura Ngunnawal Caring for Country Committee, *Committee Hansard*, 6 December 2022, p 104.

Environmental provisions

Canberra, the Bush Capital of Australia

- 3.246. Environmental concerns were raised by several submitters in their responses to the Bill,³¹⁵ including concerns relating to biodiversity, offsets, climate change resilience, environmental assessments of proposed development, and the effectiveness of ecologically sustainable development as an object of the Bill.
- 3.247. The Bill is described in the object of Act as an ‘outcomes-focussed’ Bill,³¹⁶ however, Friends of Grasslands noted that it ‘provides no guidance to ensure that “good planning” outcomes will take into account natural environment conservation principles.’³¹⁷
- 3.248. Conservation Council ACT Region said in their submission:
- ...the Draft Planning Bill is legislation that seeks to promote human development for humans, rather than promote a region where humans can live sustainably, and where other species can also thrive, both in harmony with the environment.³¹⁸
- 3.249. One submission asked whether the ‘Bush Capital’ label for Canberra would still be deserved if development were allowed to over-ride environmental concerns:
- Canberra was once proudly known to its citizens and tourists as The Bush Capital because of its abundant open spaces and enormous number of trees. How long will we be able to rejoice in that name if developers are allowed to fill the land with buildings at the cost of reducing the number of trees and open spaces?³¹⁹
- 3.250. During the public hearing on 7 December 2007, Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, noted that a healthy environment is essential to residents’ wellbeing:
- If a planning system does not sufficiently consider the environment, then it is not sufficiently considering people, because of our connection to the natural environment and our need for a healthy environment around us as Canberrans to thrive in that environment.³²⁰
- 3.251. The Environmental Defenders Office submitted that to promote distributive justice, the Bill should promote the right of people in the ACT to a safe climate. Noting the relationship between healthy ecosystems and biodiversity and the human right to a clean, healthy and sustainable environment, the Environmental Defenders Office expressed the opinion that

³¹⁵ See, for example: Rod Pitcher, *Submission 1*, pp 4–5; Environmental Defenders Office, *Submission 9*, pp 1–3; Penny Kendall, *Submission 17*, p 1; Conservation Council ACT Region, *Submission 23*, pp 4–15; Friends of Hawker Village, *Submission 35*, pp 3–4; North Canberra Community Council, *Submission 40*, p 3; Friends of Grasslands, *Submission 47*, p 1; Canberra Ornithologists Group, *Submission 64*, pp 1–5.

³¹⁶ Planning Bill 2022, para 7(1)(a).

³¹⁷ Friends of Grasslands, *Submission 47*, p 1.

³¹⁸ Conservation Council ACT Region, *Submission 23*, p 5.

³¹⁹ Rod Pitcher, *Submission 1*, p 4.

³²⁰ Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, 7 December 2007, *Committee Hansard*, p 131.

‘the ACT Government can do more to ensure the Bill is drafted to fulfil the ACT’s obligations under human rights law to achieve sustainable development in the ACT’.³²¹

Biodiversity and Climate Change Resilience

- 3.252. Many submitters to the inquiry believe that the Bill should have a more significant focus on the issues of biodiversity and climate change. While resilience is listed among the principles of good planning in clause 10 of the Bill,³²² several submitters called for stronger integration of this principle into the planning system.³²³
- 3.253. For example, the Environmental Defenders Office noted that the Bill does not define ‘climate change’, ‘sustainable’ or ‘resilient’, and called for climate change to be ‘a mandatory consideration for all decisions made, and powers and functions exercised, under the Bill’, with strong compliance and enforcement mechanisms able to be applied to development proposals likely to contribute to climate change through greenhouse gas emissions.³²⁴
- 3.254. Conservation Council ACT Region noted ‘a distinct lack of urgency demonstrated in the implementation of current planning decisions’ despite the ACT Government’s declaration of a climate emergency in May 2019, and said that the draft of the Bill ‘fails to properly acknowledge or prioritise the actions that the Territory will need to take to ensure that we are responding on an emergency footing to the climate crisis.’³²⁵
- 3.255. In their submission, North Canberra Community Council also expressed concern that ‘macro objectives around climate resilience’ are too vague to be consistently applied at the micro level, and called for metrics such as energy efficiency ratings or carbon performance targets to be implemented to ensure that sustainability and resilience principles can be applied.³²⁶
- 3.256. The evidence before the Committee highlighted the importance of environmental conservation and resilience to the community of the Territory, and spoke to the ways the Bill could contribute to that space in a significant manner.
- 3.257. The Reid Residents’ Association asserted that ‘Climate change and biodiversity loss should be used as the foundational drivers for the future planning of Canberra’.³²⁷
- 3.258. In their submission, Friends of Grasslands stressed the ‘critically important role of natural biodiversity for public health and welfare (wellness and liveability)’³²⁸ as well as for climate change resilience and protection of habitat and species.

³²¹ Environmental Defenders Office, *Submission 9.1*, p 34.

³²² Planning Bill, subcl 10(1)(h).

³²³ See, for example: Griffith Narrabundah Community Association, *Submission 32*, p 2; Planning Institute of Australia (ACT Division), *Submission 39*, pp 1–2; Inner South Canberra Community Association, *Submission 45*, p 2; Yarralumla Residents Association, *Submission 60*, p 2; Name withheld, *Submission 61*, p 17.

³²⁴ Environmental Defenders Office, *Submission 9*, p 7.

³²⁵ Conservation Council ACT Region, *Submission 23*, pp 6–7.

³²⁶ North Canberra Community Council, *Submission 40*, p 3.

³²⁷ Reid Residents’ Association, *Submission 31*, p 2.

³²⁸ Friends of Grasslands, *Submission 47*, p 1.

- 3.259. Friends of Grasslands expressed strong disappointment that the Bill ‘has not incorporated significant elements of natural biodiversity’, saying that while ‘natural environment conservation principles’ are included in the Bill’s principles of good planning,³²⁹ ‘there is little consideration of how this principle would be maintained within the outcomes planning context’.³³⁰
- 3.260. In their submission, the Canberra Ornithologists Group commented that the Bill did not take a landscape or ecosystem approach to protect and enhance biodiversity across all land tenures, and said that the Bill ‘should provide for improvement in habitats and habitat connectivity across the ACT’.³³¹
- 3.261. The Canberra Ornithologists Group called for the protection of biodiversity to be an object of the Bill, and for the Bill to specify mechanisms detailing how habitats will be protected and to limit allowable circumstances for habitat removal.³³²
- 3.262. Conservation Council ACT Region noted in their submission that there is ‘a substantial opportunity’ afforded by the Planning Review to reallocate both urban and non-urban land use zones to form a biodiversity network.³³³
- 3.263. During the public hearing on 6 December 2022, Ms Sarah Sharp, Vice President and Advocacy Coordinator, Friends of Grasslands, noted that lack of certainty on future land use had prompted a proposal she had been working on with Conservation Council ACT Region for a biodiversity network of identified areas:
- ... some sort of an overlay equivalent to a [...] nature reserve or the national park that has a primary objective for conservation but has other objectives and the land has other uses, yes.³³⁴
- 3.264. The Committee agrees that objectives to protect biodiversity and address climate change should be specifically highlighted as core elements of planning decisions in the ACT, as the wellbeing of its residents is enmeshed with the wellbeing of its environment.

Recommendation 38

The Committee recommends that the ACT Government amend the Bill’s objectives to include reference to protection of biodiversity and climate change.

ACT Climate Change Strategy 2019–25

- 3.265. The Committee is aware that in the ACT Climate Change Strategy 2019–25 Summary (the Climate Change Strategy), it stated that:

³²⁹ Planning Bill 2022, para 10(1)(g).

³³⁰ Friends of Grasslands, *Submission 47*, p 1.

³³¹ Canberra Ornithologists Group, *Submission 64*, pp 1–2.

³³² Canberra Ornithologists Group, *Submission 64*, p 2.

³³³ Conservation Council ACT Region, *Submission 23*, p 8.

³³⁴ Ms Sarah Sharp, Vice President and Advocacy Coordinator, Friends of Grasslands, *Committee Hansard*, 6 December 2022, p 115.

The ACT's climate change response is urgent [...] and is informed by an understanding that the world is in a state of climate emergency.³³⁵

The Climate Change Strategy further stated that:

The ambitious scale and rate of change required to meet our targets is unprecedented and necessitates innovative approach.³³⁶

- 3.266. The Committee notes that the current 2007 Act has been in force for 15 years. This Bill, if passed, can be expected to similarly inform decisions which impact the Territory's natural and built environments for decades to come.
- 3.267. This Bill is an opportunity for the ACT Government to take an unprecedented and innovative approach to climate change by embedding the principles of climate change resilience within the foundations of the Territory's planning objectives.

Recommendation 39

The Committee recommends that the ACT Government amend the objects of the Bill to include climate change and climate resilience so that these are mandatory considerations for all decisions made, and powers and functions exercised, under the Bill.

Ecologically sustainable development

- 3.268. The Committee heard concerns about the definition of ecologically sustainable development from many submitters and witnesses.³³⁷
- 3.269. Conservation Council ACT Region said that inclusion of ecologically sustainable development as an object of the Bill was 'a welcome step up from "sustainable development"', but believes that its definition is flawed. The Council described the object of the Bill as 'wholly human', for example pointing out the inclusion of 'economic development' in the definition of ecologically sustainable development.³³⁸
- 3.270. The Griffith Narrabundah Community Association also had concerns with the definition of ecologically sustainable development, describing achievement of economic growth and prosperity as 'intuitively, a very odd definition' of ecologically sustainable development.³³⁹ In its submission, the Griffith Narrabundah Community Association said the definition of

³³⁵ ACT Government, *ACT Climate Change strategy 2019-25 Summary*, [ACT Climate Change Strategy to 2019 to 2025 - Summary](#), p 4.

³³⁶ ACT Government, *ACT Climate Change strategy 2019-25 Summary*, [ACT Climate Change Strategy to 2019 to 2025 - Summary](#), p 5.

³³⁷ See, for example: Environmental Defenders Office, *Submission 9*, pp 5–6; Penny Kendall, *Submission 17*, p 1; Conservation Council ACT Region, *Submission 23*, pp 10–12; Lake Burley Griffin Guardians, *Submission 28*, pp 2–3; Griffith Narrabundah Community Association, *Submission 32*, p 4; Friends of Hawker Village, *Submission 35*, p 4; North Canberra Community Council, *Submission 40*, p 3; Ian Hubbard, *Submission 51*, p 1; Caroline Le Couteur, *Submission 53*, p 6; Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2022, p 132.

³³⁸ Conservation Council ACT Region, *Submission 23*, pp 10–11.

³³⁹ Ms Sue Tongue, Vice President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2022, p 68.

ecologically sustainable development in the Bill was arguably incorrect, and that the object of ecologically sustainable development needed clarification.³⁴⁰

- 3.271. In response to a Question Taken on Notice³⁴¹, Ms Sue Tongue, Vice President, Griffith Narrabundah Community Association, proposed that the definition used in the Northern Territory's *Fisheries Act 1988* could be used, which states:

Ecologically sustainable development means using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained and the total quality of life, now and in the future, can be increased.³⁴²

- 3.272. During the public hearing on 7 December 2022, Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, said that the definition of ecologically sustainable development in the Bill was broad and included provisions with the potential to conflict with the conservation of the natural environment. The Commissioner observed:

If a planning system does not sufficiently consider the environment, then it is not sufficiently considering people, because of our connection to the natural environment and our need for a healthy environment around us as Canberrans to thrive in that environment.³⁴³

- 3.273. In their submission, the Environmental Defenders Office argued that the definition of ecologically sustainable development should include:

- protection of the right to a clean, healthy and sustainable environment;
- reduction of greenhouse gas emissions;
- protection of the environment;
- protection of natural, built and cultural heritage, including Aboriginal heritage; and
- promotion of knowledge, traditions and customs of traditional custodians.³⁴⁴

- 3.274. During the public hearing on 7 December 2022, the Environmental Defenders Office referred the Committee to principles of ecologically sustainable development listed in its submission³⁴⁵, and noted that the definition given in the Bill incorporated some, but not all, of these principles.³⁴⁶

- 3.275. The principles suggested in the Environmental Defenders Office's submission were:

- the prevention of harm principle;

³⁴⁰ Griffith Narrabundah Community Association, *Submission 32*, p 4.

³⁴¹ Griffith Narrabundah Community Association, *answer to QTON 3: Definition of Ecologically Sustainable Development*, 6 December 2022 (received 9 December 2022), p 1.

³⁴² *Fisheries Act 1988* (NT), s 4(1).

³⁴³ Dr Sophie Lewis, ACT Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2022, p 131.

³⁴⁴ Environmental Defenders Office, *Submission 9*, pp 4–5.

³⁴⁵ Environmental Defenders Office, *Submission 9.1*, pp 21–23.

³⁴⁶ Ms Melanie Montalban, Managing Lawyer, ACT, Environmental Defenders Office, *Committee Hansard*, 7 December 2022, p 126.

- the precautionary principle;
- inter-generational equity principle;
- the intra-generational equity principle;
- the biodiversity principle;
- the environmental values principle;
- the polluter pays principle;
- the principle of achieving high levels of environmental protection;
- the non-regression principle; and
- the resilience principle.³⁴⁷

3.276. The Environmental Defenders Office suggested that the definition of ecologically sustainable development in the Bill should be amended to:

...recognise that ecologically sustainable development requires the effective integration of environmental, economic, social and equitable considerations in decision-making processes, and that ecologically sustainable development can be achieved through the implementation of ESD [ecologically sustainable development] principles.³⁴⁸

3.277. The Environmental Defenders Office further argued that all decisions, powers and functions under the Bill should require consideration of ecologically sustainable development. They noted in particular that there is no requirement under the Bill to consider the objects of the Bill, including ecologically sustainable development, in the establishment of the Territory Plan, or in Ministerial approval of a major amendment to the Territory Plan.³⁴⁹

3.278. During the public hearing on 7 December 2022, in response to questions regarding the word 'prosperity' in the objects of the Bill and the definition of ecologically sustainable development, Dr Erin Brady, Deputy Director-General, Planning and Sustainable Development, EPSDD, said that it was drawn from the United Nations sustainable development goals of 'people, planet, prosperity, peace, partnership', and was being used in a broad sense.³⁵⁰

3.279. The Committee believes that the definition of ecologically sustainable development should be updated to recognise that ecologically sustainable development requires the effective integration of environmental, economic, social and equitable considerations in decision-making processes, and that ecologically sustainable development can be achieved through the implementation of ecologically sustainable development principles.

³⁴⁷ Environmental Defenders Office, *Submission 9.1*, p 23.

³⁴⁸ Environmental Defenders Office, *Submission 9.1*, p 21.

³⁴⁹ Environmental Defenders Office, *Submission 9.1*, p 23.

³⁵⁰ Dr Erin Brady, Deputy Director-General, Planning and Sustainable Development, EPSDD, *Committee Hansard*, 7 December 2022, pp 177–178.

Recommendation 40

The Committee recommends that the ACT Government amend the Bill to include a clearer and stronger definition of ‘ecologically sustainable development’, in line with the common national and international definitions as well as the recommendations set out in the Environmental Defenders Office’s submission to the draft Bill.

Environmental Significance Opinions and Environmental Impact Statements

- 3.280. Several submissions raised concerns about the environmental assessment processes outlined in the Bill, in particular the removal of the Strategic Environmental Assessment process, and the processes for Environmental Significance Opinions (ESOs) and Environmental Impact Statements (EIS).³⁵¹
- 3.281. In their submission, Conservation Council ACT Region said that the Bill ‘perpetuates the arrangement whereby a “planning” decision is seen as being separate from an “environmental” decision’ and ignores that most developments have environmental impacts, all of which should be assessed. It also noted that there is a potential for conflicts of interest arising when Environmental Significance Opinion referrals are made by government agencies themselves.³⁵²
- 3.282. Conservation Council ACT Region also noted that Estate Development Plans do not require an Environmental Impact Statement, despite being considered significant developments. Given the scale of such developments and the range of likely environmental impacts, the Council considers that an Environmental Impact Statement should be required in such cases.³⁵³
- 3.283. Conservation Council ACT Region also called for Strategic Environmental Assessments to be retained, noting that it could be used ‘to assess cross-region policy, for example, to determine the development of a biodiversity network or layer across the urban landscape’.³⁵⁴
- 3.284. During the public hearing on 6 December 2022, Ms Sarah Sharp, Vice President and Advocacy Coordinator, Friends of Grasslands observed that the cumulative effects of multiple projects were not covered in an Environmental Impact Statement, and the Bill did not have a strategic approach.³⁵⁵
- 3.285. In relation to these representations, the Committee makes the following recommendations.

³⁵¹ See, for example: Ginninderra Falls Association, *Submission 4*, p 1; Richard Johnston, *Submission 6*, p 7; Conservation Council ACT Region, *Submission 23*, pp 12–14; Planning Institute of Australia (ACT Division), *Submission 39*, p 4; Belconnen Community Council, *Submission 65*, p 5.

³⁵² Conservation Council ACT Region, *Submission 23*, pp 11–12.

³⁵³ Conservation Council ACT Region, *Submission 23*, p 13.

³⁵⁴ Conservation Council ACT Region, *Submission 23*, p 13.

³⁵⁵ Ms Sarah Sharp, Vice President and Advocacy Coordinator, Friends of Grasslands, *Committee Hansard*, 6 December 2022, p 111.

Recommendation 41

The Committee recommends that the ACT Government amend the Bill to reinsert Strategic Environmental Assessments into the Bill, or it be amended to include a trigger to assess listed ACT-threatened species under the *Nature Conservation Act 2014* in parallel with a Strategic Environmental Assessment as required under the *EPBC Act*.

Recommendation 42

The Committee recommends that the ACT Government amend the Bill to include reference to ‘cumulative environmental impact’ in the planning principles and define ‘environmentally sound’.

Key threatening processes

- 3.286. Ms Sarah Sharp, Vice President and Advocacy Coordinator, Friends of Grasslands also noted ‘an inequality’ and disparity between the Bill and the *Nature Conservation Act 2014* in the triggers for requiring an Environmental Impact Statement.³⁵⁶
- 3.287. When questioned by the Committee at the public hearing on 7 December 2022 about key threatening processes in the *Nature Conservation Act 2014* not triggering Environmental Impact Statement in the Bill, Ms Eliza Larson, Acting Conservator Liaison, Office of the Conservator of Flora and Fauna, EPSDD, affirmed that those processes do not currently trigger an Environmental Impact Statement under the Bill, but that discussions were underway to consider how they could be incorporated.³⁵⁷
- 3.288. The ACT Conservator of Flora and Fauna, Mr Bren Burkevics, further noted that the Bill provides mechanisms for the Minister to declare protected matters as a disallowable instrument.³⁵⁸
- 3.289. The Committee is of the view that where a proposed development would be a key threatening process under the *Nature Conservation Act 2014*, an Environmental Impact Statement would help ensure protection of native species and ecological communities potentially affected by the development.

Recommendation 43

The Committee recommends that the ACT Government amend the Bill to include ‘key threatening process’ as a trigger for an Environmental Impact Statement in Chapter 6 of the Bill.

³⁵⁶ Ms Sarah Sharp, Vice President and Advocacy Coordinator, Friends of Grasslands, *Committee Hansard*, 6 December 2022, p 112.

³⁵⁷ Ms Eliza Larson, Acting Conservator Liaison, Office of the Conservator of Flora and Fauna, EPSDD, *Committee Hansard*, 7 December 2022, p 158.

³⁵⁸ Mr Bren Burkevics, ACT Conservator of Flora and Fauna, *Committee Hansard*, 7 December 2022, pp 158–159.

Recommendation 44

The Committee recommends that the ACT Government amend the Bill to provide a stronger link to existing environmental legislation such as the *Nature Conservation Act 2014*.

Protected matters

3.290. Both the Environmental Defenders Office and Conservation Council ACT Region noted that under the Bill, the meaning of ‘protected matter’ only extends to matters protected under Chapter 2, Part 3 of the Commonwealth’s *Environment Protection and Biodiversity Conservation Act 1999*, which are matters of national environmental significance.³⁵⁹ These include:

- World Heritage Listed properties;
- National Heritage places;
- Declared Ramsar wetlands;
- Listed threatened species;
- Listed threatened ecological communities;
- Migratory species protected under international agreements;
- Nuclear actions; and
- Water resources in relation to coal seam gas development and large coal mining development.³⁶⁰

3.291. Both organisations noted that the list of Commonwealth protected matters is not as expansive as the list of protected matters under the *Nature Conservation Act 2014* (ACT), which includes species in the extinct and conservation dependent national categories, ecological communities in the vulnerable national category, as well as collapsed and provisional categories, and regional categories.³⁶¹

3.292. The Conservation Council ACT Region also commented:

The protection of matters at a national level is often because those species or ecological communities are at risk nationally, and so their local protection is important. However, local protection via the NC Act is increasingly important as pressure on biodiversity rises nationally - it is only by protecting local matters that we will contribute positively and head off the risk of extinction nationally.³⁶²

3.293. The Environmental Defenders Office also noted that while the Minister can declare certain matters to be protected under section 214 of the Bill, declarations using the existing

³⁵⁹ Environmental Defenders Office, *Submission 9.1*, pp 37–38; Conservation Council ACT Region, *Submission 23*, p 31.

³⁶⁰ Planning Bill 2022, subcl 218(2); *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, s 34.

³⁶¹ Environmental Defenders Office, *Submission 9.1*, p 38; Conservation Council ACT Region, *Submission 23*, p 29; *Nature Conservation Act 2014*, ss 63–64A, 69.

³⁶² Conservation Council ACT Region, *Submission 23*, p 29.

equivalent power under the current 2007 Act has not included all ACT-listed species and ecological communities as protected matters.³⁶³

- 3.294. Both the Environmental Defenders Office and Conservation Council ACT Region argued in their submissions that the Bill should be amended to expand the meaning of ‘protected matter’ to also include matters protected under the *Nature Conservation Act 2014*.³⁶⁴
- 3.295. The Committee is of the view that to ensure ACT-listed protected matters are automatically protected under the Bill, the Bill should be amended to expand the scope of ‘protected matters’ to also include matters protected under the *Nature Conservation Act 2014*.

Recommendation 45

The Committee recommends that the ACT Government amend the Bill’s definition of ‘protected matters’ to include matters protected under the *Nature Conservation Act 2014*.

Offsets

- 3.296. Offsets are defined in the Bill as a means of environmental compensation for adverse environmental impacts.³⁶⁵
- 3.297. The Committee received evidence that environmental offsets are regarded as ineffective and that they should only be considered as a last resort.³⁶⁶
- 3.298. According to the Canberra Ornithologists Group, ‘there are significant questions around whether biodiversity offsets actually deliver the required outcome of “no net loss”’. They called for a review of the effectiveness of offset programs, going so far as to suggest that all development applications which include offsets be suspended until the conclusion of said review.³⁶⁷
- 3.299. Conservation Council ACT Region also asserted in their submission that ‘there is little proof that [offsets] protect the environment’ and noted that offsets may not provide the benefits required in a suitable timeframe. For example, trees which are planted to offset emissions may need decades to grow to the maturity at which they can capture the required amount of CO₂ (carbon dioxide). They suggested that an offset program should ‘at the very least’ be in place before development starts and called for the Bill to affirm the use of offsets as a last resort.³⁶⁸

³⁶³ Environmental Defenders Office, *Submission 9.1*, p 38

³⁶⁴ Environmental Defenders Office, *Submission 9.1*, p 38; Conservation Council ACT Region, *Submission 23*, p 30.

³⁶⁵ Planning Bill 2022, cl 219.

³⁶⁶ See, for example: Ginninderra Falls Association, *Submission 4*, p 1; Conservation Council ACT Region, *Submission 23*, pp 14–15; Friends of Grasslands, *Submission 47*, p 2; Caroline Le Couteur, *Submission 53*, p 4.

³⁶⁷ Canberra Ornithologists Group, *Submission 64*, p 4.

³⁶⁸ Conservation Council ACT Region, *Submission 23*, pp 14–15.

- 3.300. Likewise, Friends of Grasslands expressed concern that the Bill should ensure that all possible measures to avoid and mitigate the impacts of an action should be taken before biodiversity offsets could be considered.³⁶⁹
- 3.301. At the public hearing on 7 December 2022, Mr Frederick Weber, President of the ACT Rural Landholders Association of Farmers, observed that offset land is often neglected, saying ‘in a lot of cases, it is lock the gate, throw away the key, and the land is rested and deteriorates significantly’. He suggested that rural landholders, given appropriate knowledge, support, and accountability, could improve outcomes for such land.³⁷⁰
- 3.302. Further, the ACT Rural Landholders Association of Farmers hoped that the ACT Government would, alongside federal biodiversity schemes, fund rural landholders to maintain land that would otherwise be offset, to reach biodiversity and conservation targets.³⁷¹
- 3.303. When questioned at the public hearing on 7 December 2022 as to whether environment offsets had any benefit, Mr Bren Burkevics, ACT Conservator of Flora and Fauna, observed that, while there is a growing body of evidence to suggest that offsets are not the best outcome, it is important that an ‘offsets policy must be absolutely first class and that the absolute values are recognised as protected in the appropriate fashion’.³⁷²
- 3.304. He also noted the importance of making a ‘decision about what needs to be locked away very, very early so that the future planning can be best guided knowing where those high value assets are and that you cannot go’, to maintain connectivity between high conservation value areas and protect threatened species.³⁷³
- 3.305. Ms Caroline Le Couteur highlighted the broader issue of offset land being maintained by volunteer labour, which she noted was ‘privatising the gains and socialising the losses’ of the practice of offsetting. She called for developers to be required to fully fund offsets in perpetuity.³⁷⁴
- 3.306. The Committee is of the opinion that the use of offsets should be limited and only applied in line with best scientific practice.

Recommendation 46

The Committee recommends that the ACT Government review offsets policy to ensure it is current and the planning system only allows offsetting in limited circumstances and in line with the best practice science-based principles.

³⁶⁹ Friends of Grasslands, *Submission 47*, p 2.

³⁷⁰ Mr Frederick Weber, President, ACT Rural Landholders Association of Farmers, *Committee Hansard*, 7 December 2022, p 153.

³⁷¹ Mr Frederick Weber, President, ACT Rural Landholders Association of Farmers, *Committee Hansard*, 7 December 2022, p 153.

³⁷² Mr Bren Burkevics, ACT Conservator of Flora and Fauna, *Committee Hansard*, 7 December 2022, p 157.

³⁷³ Mr Bren Burkevics, ACT Conservator of Flora and Fauna, *Committee Hansard*, 7 December 2022, pp 157–158.

³⁷⁴ Caroline Le Couteur, *Submission 53*, p 4.

Establishment of new bodies

Government Landscape Architect

- 3.307. During the public hearing on 6 December 2022, Ms Cia Flannery, ACT President, Australian Institute of Landscape Architects (ACT Chapter), told the Committee that there is a strong need for a landscape policy for the entire ACT. Ms Flannery described the planning reform process as an opportunity to develop a holistic vision and proactive planning for green space and urban infill.³⁷⁵
- 3.308. Ms Flannery noted that New South Wales and South Australia have senior landscape architects within the Government Architect's Office, and that landscape architects, planners and engineers all work collaboratively in those offices. She argued that a senior landscape architect in the ACT Government Architect's Office or a senior representative on the NCDRP would be 'key', noting that landscape architecture 'draws science, and design, and planning, together'.³⁷⁶
- 3.309. Ms Catherine Townsend, ACT Government Architect and Chair National Capital Design Review Panel, told the Committee during the hearing on 6 December 2022 that she had considered having a senior landscape architect within her office and thought that the principle was a good one, although practicalities would need to be developed.³⁷⁷
- 3.310. Mr Ben Ponton, Director-General, EPSDD, noted during the same hearing that EPSDD has a number of senior landscape architects available to the ACT Government Architect to draw on as necessary, and that the NCDRP could also draw on those resources.³⁷⁸ This was also re-stated by Minister Gentleman in a response to a Question on Notice regarding a senior landscape architect.³⁷⁹
- 3.311. The Committee is in agreement that a Government Landscape Architect position for the ACT would be able to promote the connection between the natural and built landscapes which is so valued in our 'Bush Capital' and would bring a strategic perspective to Territory-wide planning.

Recommendation 47

The Committee recommends that the ACT Government appoint a Government Landscape Architect to provide advice to the ACT Government and explore the introduction of a landscape policy for the Territory.

³⁷⁵ Ms Cia Flannery, ACT President, Australian Institute of Landscape Architects (ACT Chapter), *Committee Hansard*, 6 December 2022, pp 17–18.

³⁷⁶ Ms Cia Flannery, ACT President, Australian Institute of Landscape Architects (ACT Chapter), *Committee Hansard*, 6 December 2022, p 18.

³⁷⁷ Ms Catherine Townsend, ACT Government Architect and Chair National Capital Design Review Panel, *Committee Hansard*, 6 December 2022, p 2.

³⁷⁸ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 6 December 2022, p 2.

³⁷⁹ Mr Mick Gentleman MLA, *answer to QON 6: Senior Landscape Architect*, 9 December 2022 (received 19 December 2022), p 1.

Social Planning Committee or Social Planning Unit

- 3.312. In their submission, ACT Council of Social Service recommended a social planning unit within the EPSDD be established to ensure that social planning principles are incorporated into land release policies and development decisions, and to ensure genuine consultation with people mostly impacted including disadvantaged groups:

The lack of a social planning unit remains a significant flaw in the Planning Bill.³⁸⁰

- 3.313. This was supported by Advocacy for Inclusion:

We also support ACTCOSS in their calls for a social planning unit that ensures a social planning focus is at the centre of planning policy and that needs assessment and lived experience voice guides planning policies and practice. AFI believes a social planning unit should focus on accessibility and universal design as an early priority given population ageing and equity priorities.

We specifically want people with disabilities to be more present in Canberra planning conversations and considerations on municipal government functions.³⁸¹

- 3.314. The Committee heard that there was currently a gap in the current planning process when it came to the diverse needs of people, noting that the ACT Government used to have a social planning committee to ensure the needs of groups experiencing social disadvantage were taken into account in planning processes, and there would be advantages in incorporating this into the Bill:

I think, you know, using the bill to require the establishment of a social planning unit once again brings back this attention to the importance of planning being around the inclusion of vulnerable people who face disadvantage, particularly when there are poor planning outcomes.³⁸²

- 3.315. The Committee is of the view that the ACT Government look into establishing a Social Planning Committee or a Social Planning Unit, similar to the system that the ACT used to have in place. The Committee is strongly of the view that this would provide inputs into the social aspects of planning, such as affordable housing and access to community facilities for people with disabilities and vulnerabilities.

Recommendation 48

The Committee recommends that the ACT Government establish a Social Planning Committee or a Social Planning Unit.

³⁸⁰ ACT Council of Social Service, *Submission 63*, p 2.

³⁸¹ Advocacy for Inclusion, *Submission 52*, p 3.

³⁸² Dr Emma Campbell, Chief Executive Officer, ACT Council of Social Service, *Committee Hansard*, 6 December 2022, p 53.

4. Conclusion

- 4.1. When the 2007 Act was introduced, it was the most significant reform to the planning legislation in the ACT since self-government. This new Bill will repeal and replace the existing 2007 Act and will be the first of three major planning reforms to arise from the Review, alongside the introduction of District Strategies and a new Territory Plan.
- 4.2. From the wide range of evidence received through submissions and at public hearings, the Committee recognises that there is still a plethora of work to be done as a result of the ACT Planning System Review and Reform Project. Nevertheless, the Committee is of the view that this Bill is a first step in the planning reform process to improve and modernise the ACT's planning framework.
- 4.3. Accordingly, the Committee recommends that the Assembly and its 25 MLAs who represent and make decisions for the people of the ACT, fully consider the information, evidence, and recommendations presented in this report along with additional comments, before debating the *Planning Bill 2022*.
- 4.4. The Committee hopes that in doing so, this will enable the Assembly to shape the best possible version of the Bill for the people of the Territory.

Recommendation 49

The Committee recommends that the Assembly consider this report along with additional comments before debating the Planning Bill 2022.

- 4.5. The Committee consulted widely across community councils, environmental organisations, housing industry groups, residential associations and individual citizens, receiving 65 submissions and hearing from 57 individuals and organisations across two days of hearings.
- 4.6. The Committee acknowledges the short timeframe in which it has had to complete this important inquiry and the overriding interest from the community and other key stakeholders in the proposed legislation. The Committee is grateful for the significant commitment of time and resources by inquiry participants to prepare submissions and exhibits to this inquiry – many of the Committee's recommendations, or variations thereof, have been based upon suggestions from inquiry participants.
- 4.7. The Committee wishes to extend its appreciation to all inquiry participants for their engagement throughout the inquiry process and for the valuable contributions they made in assisting and informing the Committee's deliberations.



Ms Jo Clay MLA

Chair

22 December 2022

Appendix A: Submissions

| No. | Submission by | Received | Published |
|------|-----------------------------------------------------|----------|-----------|
| 1 | Rod Pitcher | 30/09/22 | 06/10/22 |
| 2 | Master Builders Association of the ACT | 26/10/22 | 23/11/22 |
| 2.1 | Master Builders Association of the ACT – Attachment | 26/10/22 | 23/11/22 |
| 3 | Confidential | 05/11/22 | 23/11/22 |
| 4 | Ginninderra Falls Association Inc. | 06/11/22 | 23/11/22 |
| 5 | Name withheld | 08/11/22 | 23/11/22 |
| 6 | Richard Johnston | 08/11/22 | 23/11/22 |
| 7 | Name withheld | 09/11/22 | 23/11/22 |
| 8 | Owners Corporation Network ACT | 10/11/22 | 23/11/22 |
| 9 | Environmental Defenders Office | 10/11/22 | 23/11/22 |
| 9.1 | Environmental Defenders Office – Attachment | 10/11/22 | 23/11/22 |
| 10 | Name withheld | 11/11/22 | 23/11/22 |
| 11 | Name withheld | 12/11/22 | 23/11/22 |
| 12 | Catherine Cronan | 12/11/22 | 23/11/22 |
| 13 | Gordon Lucas | 12/11/22 | 23/11/22 |
| 14 | Name withheld | 12/11/22 | 23/11/22 |
| 15 | Margaret Henderson | 14/11/22 | 23/11/22 |
| 16 | Jane Goffman | 15/11/22 | 23/11/22 |
| 16.1 | Jane Goffman – Attachment | 15/11/22 | 23/11/22 |
| 17 | Penny Kendall | 15/11/22 | 23/11/22 |
| 18 | Green House Architects | 15/11/22 | 23/11/22 |
| 19 | Caroline Wenger | 15/11/22 | 23/11/22 |
| 20 | M Saunders | 15/11/22 | 24/11/22 |
| 21 | Tender Funerals Canberra Region | 15/11/22 | 24/11/22 |
| 22 | Hugh Dakin | 15/11/22 | 24/11/22 |
| 23 | Conservation Council ACT Region | 15/11/22 | 24/11/22 |
| 24 | Tim Field | 15/11/22 | 24/11/22 |
| 25 | Dr Ann Kent | 15/11/22 | 24/11/22 |
| 26 | Name withheld | 15/11/22 | 24/11/22 |
| 27 | Dickson Residents Group | 15/11/22 | 24/11/22 |
| 28 | Lake Burley Griffin Guardians | 15/11/22 | 24/11/22 |

| | | | |
|------|-----------------------------------------------------------|----------|----------|
| 29 | Bruce Paine | 16/11/22 | 24/11/22 |
| 30 | Canberra Planning Action Group | 16/11/22 | 24/11/22 |
| 31 | Reid Residents Association | 16/11/22 | 24/11/22 |
| 32 | Griffith Narrabundah Community Association | 16/11/22 | 24/11/22 |
| 33 | Suzanne Vaisutis-White | 16/11/22 | 24/11/22 |
| 34 | Peter Johns | 16/11/22 | 24/11/22 |
| 34.1 | Peter Johns – Attachment | 16/11/22 | 24/11/22 |
| 35 | Friends of Hawker Village | 16/11/22 | 24/11/22 |
| 36 | Gungahlin Community Council | 16/11/22 | 24/11/22 |
| 37 | Curtin Residents Association | 16/11/22 | 24/11/22 |
| 38 | Weston Creek Community Council | 16/11/22 | 24/11/22 |
| 38.1 | Weston Creek Community Council | 16/11/22 | 24/11/22 |
| 39 | Planning Institute of Australia ACT Division | 16/11/22 | 24/11/22 |
| 40 | North Canberra Community Council | 16/11/22 | 24/11/22 |
| 41 | Australian Conservation Alliance | 16/11/22 | 24/11/22 |
| 42 | Rosemary Blemings | 16/11/22 | 24/11/22 |
| 43 | ACT Government | 16/11/22 | 24/11/22 |
| 44 | Margaret Dudley | 16/11/22 | 24/11/22 |
| 45 | Inner South Canberra Community Council | 16/11/22 | 24/11/22 |
| 45.1 | Inner South Canberra Community Council – Attachment | 16/11/22 | 24/11/22 |
| 46 | Name withheld | 16/11/22 | 24/11/22 |
| 47 | Friends of Grasslands | 16/11/22 | 24/11/22 |
| 48 | Russell Bradney | 16/11/22 | 24/11/22 |
| 49 | Confidential | 16/11/22 | 24/11/22 |
| 50 | John Keeley OAM | 16/11/22 | 24/11/22 |
| 51 | Ian Hubbard | 16/11/22 | 24/11/22 |
| 52 | Advocacy for Inclusion | 16/11/22 | 24/11/22 |
| 53 | Caroline Le Couteur | 16/11/22 | 24/11/22 |
| 54 | Liam Foley | 16/11/22 | 24/11/22 |
| 55 | Woden Valley Community Council | 16/11/22 | 24/11/22 |
| 56 | Dr Martha Kinsman | 17/11/22 | 24/11/22 |
| 57 | Gina Pinkas | 17/11/22 | 24/11/22 |
| 58 | Property Council of Australia (ACT Division) | 18/11/22 | 24/11/22 |
| 58.1 | Property Council of Australia (ACT Division) – Attachment | 18/11/22 | 24/11/22 |

| | | | |
|----|----------------------------------|----------|----------|
| 59 | Greater Canberra | 18/11/22 | 24/11/22 |
| 60 | Yarralumla Residents Association | 19/11/22 | 24/11/22 |
| 61 | Name withheld | 20/11/22 | 24/11/22 |
| 62 | ACT Law Society | 21/11/22 | 01/12/22 |
| 63 | ACT Council of Social Service | 23/11/22 | 01/12/22 |
| 64 | Canberra Ornithologists Group | 25/11/22 | 01/12/22 |
| 65 | Belconnen Community Council | 30/11/22 | 01/12/22 |

Appendix B: Exhibits

| No. | Exhibit from | Received | Published |
|-----|--------------------------------------------------------------------------------|----------|-----------|
| 1 | Australian Institute of Landscape Architects (ACT Chapter) – Opening Statement | 05/12/22 | 19/12/22 |
| 2 | Australian Institute of Architects (ACT Chapter) – Opening Statement | 05/12/22 | 19/12/22 |
| 3 | Planning Institute of Australia (ACT Division) – Opening Statement | 05/12/22 | 19/12/22 |
| 4 | Greater Canberra – Opening Statement | 06/12/22 | 19/12/22 |
| 5 | Canberra Planning Action Group – Opening Statement | 05/12/22 | 19/12/22 |
| 6 | Griffith Narrabundah Community Association – Opening Statement | 06/12/22 | 19/12/22 |
| 7 | Lake Burley Griffin Guardians – Opening Statement | 05/12/22 | 19/12/22 |
| 8 | Confidential | 06/12/22 | 19/12/22 |
| 9 | Gina Pinkas – Opening Statement | 06/12/22 | 19/12/22 |
| 10 | Environmental Defenders Office – Opening Statement | 06/12/22 | 19/12/22 |
| 11 | Property Council of Australia (ACT Division) – Opening Statement | 07/12/22 | 19/12/22 |
| 12 | ACT Rural Landholders’ Association of Farmers – Opening Statement | 07/12/22 | 19/12/22 |
| 13 | Ginninderra Falls Association – Opening Statement | 07/12/22 | 19/12/22 |
| 14 | Curtin Residents Association – Opening Statement | 07/12/22 | 19/12/22 |
| 15 | North Canberra Community Council – Opening Statement | 15/12/22 | 19/12/22 |
| 16 | Reid Residents’ Association – Opening Statement | 15/12/22 | 19/12/22 |
| 17 | Molonglo Group – Correspondence | 07/12/22 | 19/12/22 |
| 18 | Name withheld – Correspondence | 15/12/22 | 22/12/22 |

Appendix C: Witnesses

Tuesday, 6 December 2022

ACT Government Architect and National Capital Design Review Panel

- **Ms Catherine Townsend**, ACT Government Architect and Chair National Capital Design Review Panel
- **Mr Ben Ponton**, Director-General, EPSDD

Australian Institute of Landscape Architects (ACT Chapter), Australian Institute of Architects, Planning Institute of Australia (ACT Division)

- **Ms Cia Flannery**, ACT President, Australian Institute of Landscape Architects (ACT Chapter)
- **Ms Jane Cassidy**, ACT President, Australian Institute of Architects
- **Mr Trevor Fitzpatrick**, President, Planning Institute of Australia (ACT Division)
- **Mr Peter Johns**, Committee member, Planning Institute of Australia (ACT Division)

Master Builders Association of the ACT

- **Mr Michael Hopkins**, Chief Executive Officer

Riverview Projects, Canberra Town Planning, Molonglo

- **Ms Imogen Featherstone**, Development Manager (Planning), Riverview Projects
- **Mr Pieter van der Walt**, Director – Senior Town Planner, Canberra Town Planning
- **Mr Gordon Lowe**, Head of Planning, Molonglo

Greater Canberra, Canberra Planning Action Group

- **Mr Howard Maclean**, Convenor, Greater Canberra
- **Mr Andrew Donnellan**, Secretary, Greater Canberra
- **Mr Eben Leifer**, Deputy Convenor, Greater Canberra
- **Mr Geoff Pryor**, Convenor, Canberra Planning Action Group
- **Mr Albert Oberdorf**, Member, Canberra Planning Action Group

ACTCOSS, Advocacy for Inclusion

- **Dr Emma Campbell**, Chief Executive Officer, ACT Council of Social Service
- **Ms Avan Daruwalla**, Policy Officer, ACT Council of Social Service
- **Mr Craig Wallace**, Acting Chief Executive Officer, Advocacy for Inclusion

Woden Valley Community Council, Inner South Canberra Community Council, Weston Creek Community Council, Tuggeranong Community Council

- **Ms Fiona Carrick**, President, Woden Valley Community Council
- **Ms Marea Fatseas**, Chair, Inner South Canberra Community Council
- **Mr Bill Gemmell**, Chair, Weston Creek Community Council

- **Ms Michelle Bourdet**, Secretary, Weston Creek Community Council
- **Mr Jeffrey Bollard**, Vice President, Tuggeranong Community Council

Griffith Narrabundah Community Association

- **Dr David Denham AM**, President, Griffith Narrabundah Community Association
- **Ms Susanne (Sue) Tongue**, Vice President, Griffith Narrabundah Community Association

Belconnen Community Council, North Canberra Community Council, Gungahlin Community Council

- **Mr Glen Hyde**, Deputy Chair, Belconnen Community Council
- **Ms Marianne Albury-Colless**, Committee member, North Canberra Community Council
- **Mr Peter Elford**, Treasurer, Gungahlin Community Council

Panel of individuals (first session)

- **Mr Hugh Dakin**
- **Dr Martha Kinsman**
- **Mr Richard Morrison**, Vice Convenor, Lake Burley Griffin Guardians

Panel of individuals (second session)

- **Ms Kate Bradney**
- **Ms Georgina (Gina) Pinkas**
- **Mr Tim Field**

Dhawura Ngunnawal Caring for Country Committee

- **Dr Caroline Hughes**, Co-Chair
- **Ms Roslyn Brown**, Committee member
- **Mr Stephen Mudford**, Committee member
- **Ms Mary Mudford**, Committee member

Friends of Grasslands, Canberra Ornithologists Group

- **Ms Sarah Sharp**, Vice President and Advocacy Coordinator, Friends of Grasslands
- **Mr Neil Hermes**, President, Canberra Ornithologists Group
- **Ms Clare Henderson**, Committee member, Canberra Ornithologists Group

Wednesday, 7 December 2022

Environmental Defenders Office

- **Ms Melanie Montalban**, Managing Lawyer, ACT
- **Ms Frances Bradshaw**, Senior Solicitor

ACT Commissioner for Sustainability and the Environment

- **Dr Sophie Lewis**, ACT Commissioner for Sustainability and the Environment

Property Council of Australia (ACT Division)

- **Mr Ross Grove**, Acting ACT Executive Director
- **Ms Arabella Rohde**, ACT Division Council President
- **Mr Kip Tanner**, Planning and Residential Committee Member

Curtin Residents Association, Reid Residents Association

- **Dr Ian Elsum**, President, Curtin Residents Association
- **Ms Marianne Albury-Colless**, President, Reid Residents' Association

Friends of Hawker Village, Ginninderra Falls Association, ACT Rural Landholders Association

- **Ms Robyn Coghlan**, Secretary, Friends of Hawker Village
- **Mr David Kelly**, President, Ginninderra Falls Association
- **Mr Frederick Weber**, President, ACT Rural Landholders Association of Farmers

ACT Conservator of Flora and Fauna

- **Mr Bren Burkevics**, ACT Conservator of Flora and Fauna, EPSDD
- **Ms Eliza Larson**, Acting Director Conservator Liaison, Office of the Conservator of Flora and Fauna, EPSDD

Minister for Planning and Land Management

- **Mr Mick Gentleman MLA**, Minister for Planning and Land Management
- **Mr Ben Ponton**, Director-General, EPSDD
- **Dr Erin Brady**, Deputy Director-General, Planning and Sustainable Development, EPSDD
- **Mr James Bennett**, Executive Branch Manager, Building Reform, Housing and Design Services, EPSDD

Appendix D: Questions on Notice and Questions Taken on Notice

Questions on Notice

| No. | Date | Asked of | Subject | Response received |
|-----|----------|-------------------------------------------|------------------------------------------------|-------------------|
| 1 | 13/12/22 | Minister for Planning and Land Management | Design guides | 19/12/22 |
| 2 | 13/12/22 | Minister for Planning and Land Management | Dhawura Ngunnawal Caring for Country Committee | 19/12/22 |
| 3 | 13/12/22 | Minister for Planning and Land Management | National Capital Design Review Panel | 19/12/22 |
| 4 | 13/12/22 | Minister for Planning and Land Management | Consultation on Planning Bill 2022 | 20/12/22 |
| 5 | 13/12/22 | Minister for Planning and Land Management | Planning ombudsman | 19/12/22 |
| 6 | 13/12/22 | Minister for Planning and Land Management | Senior landscape architects | 19/12/22 |
| 7 | 13/12/22 | Minister for Planning and Land Management | Governance structures | 19/12/22 |
| 8 | 13/12/22 | Minister for Planning and Land Management | National Capital Design Review Panel reports | 19/12/22 |
| 9 | 13/12/22 | Minister for Planning and Land Management | Key threatening processes | 19/12/22 |
| 10 | 13/12/22 | Minister for Planning and Land Management | Minor/technical variations | 19/12/22 |
| 11 | 13/12/22 | Minister for Planning and Land Management | Strategic environmental assessments | 19/12/22 |
| 12 | 13/12/22 | Minister for Planning and Land Management | Section 47 of the Territory Plan | 19/12/22 |

| | | | | |
|----|----------|-------------------------------------------|-------------------------------------------|----------|
| 13 | 13/12/22 | Minister for Planning and Land Management | Housing affordability | 19/12/22 |
| 14 | 13/12/22 | Minister for Planning and Land Management | Territory Priority Projects | 19/12/22 |
| 15 | 13/12/22 | Minister for Planning and Land Management | Examples and case studies | 19/12/22 |
| 16 | 13/12/22 | Minister for Planning and Land Management | Social planning unit | 20/12/22 |
| 17 | 13/12/22 | Minister for Planning and Land Management | Notifiable instruments | 19/12/22 |
| 18 | 13/12/22 | Minister for Planning and Land Management | Review rights | 19/12/22 |
| 19 | 13/12/22 | Minister for Planning and Land Management | Independent planning decisions | 19/12/22 |
| 20 | 13/12/22 | Minister for Planning and Land Management | Mandatory consultation with the community | 19/12/22 |
| 21 | 13/12/22 | Minister for Planning and Land Management | Definitions and training | 20/12/22 |
| 22 | 13/12/22 | Minister for Planning and Land Management | Ecologically sustainable development | 20/12/22 |

Questions Taken on Notice

| No. | Date | Asked of | Subject | Response received |
|-----|----------|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|-------------------|
| 1 | 06/12/22 | Mr Ben Ponton (Director-General, EPSDD) | Sections of the Bill where the Chief Planner must consider NCDRP advice | 14/12/22 |
| 2 | 06/12/22 | Mr Ben Ponton (Director-General, EPSDD) | Sections of the Bill where the NCDRP advice is required for TPPs | 14/12/22 |
| 3 | 06/12/22 | Ms Sue Tongue (Griffith Narrabundah Community Association) | Definition of Ecologically Sustainable Development | 09/12/22 |
| 4 | 06/12/22 | Ms Clare Henderson (Canberra Ornithologists Group) | Public reasons for decisions when advice is not followed | 19/12/22 |
| 5 | 06/12/22 | Ms Sarah Sharp (Friends of Grasslands) | Environmental significance opinions | 15/12/22 |
| 6 | 07/12/22 | Environmental Defenders Office | Thresholds and tests to make the system less susceptible to vexatious litigants | 20/12/22 |
| 7 | 07/12/22 | Environmental Defenders Office | Controlled Activity Orders | 20/12/22 |
| 8 | 07/12/22 | Environmental Defenders Office | Technical requirements being inserted into legislation | 20/12/22 |
| 9 | 07/12/22 | Mr Bren Burkevics (ACT Conservator for Flora and Fauna) | Strategic environmental assessments | 08/12/22 |
| 10 | 07/12/22 | Mr Mick Gentleman MLA (Minister for Planning and Land Management) | What are the provisions requiring compliance with Variation 369 in the Bill? | 15/12/22 |
| 11 | 07/12/22 | Mr Mick Gentleman MLA (Minister for Planning and Land Management) | What are the sections of the Bill that have mandatory requirements for consultation on DAs? | 16/12/22 |

Appendix E: Additional comments – Ms Jo Clay MLA (Chair)

1

Additional comments from Jo Clay

The ACT Government has embarked on a big project to reform our Planning system in the ACT and will do so in three stages. The first stage is through the reform of planning legislation with the introduction of the Planning Bill. The Planning Bill provides the necessary framework through which all planning decisions are made. The committee agreed on 49 recommendations to improve the Planning Bill to make it more transparent, more accountable, improve consultation, improve environmental protection and improve governance. However, members of the Committee could not agree on some areas of key concern raised by the community. These are significant and so I want to make additional comments about them:

Appeal Rights

Appeal rights in planning are complex. I note comments made by Ms le Couteur on appeal rights in the inquiry she chaired into development application processes in the ACT from 2018-2020. The issues she raised have not been remedied by this Bill and in fact, many of the issues she described have become more acute.

The right to review government decisions is a basic element of democratic systems. Our committee heard from residents, industry, environmental and other organisations about appeal rights on planning decisions. Views differed widely.

Our Committee heard concerns about the risk of vexatious litigants appealing government decisions, particularly around public housing developments. We heard concerns that appeals would mean urgent problems, like housing affordability and homelessness, could not be addressed:

I'm not sure if witnesses used the term 'vexatious litigation' in accordance with its legal meaning. Section 32 of the *Australian Capital Territory Civil and Administrative Tribunal Act (2008)* (the ACAT Act) allows the ACT Civil and Administrative Tribunal (ACAT) to dismiss or strike out an application that is vexatious. ACAT can strike a matter out if ACAT considers the application frivolous or vexatious, lacking in substance, an abuse of process or made by a person who has been dealt with by a court or tribunal in Australia as frivolous or vexatious.

I heard little evidence and can find little evidence that ACAT has found that many planning matters brought in recent years were 'vexatious'. I heard evidence from the Environmental Defenders Office showing a low level of 'vexatious' matters.

Many witnesses who said they were concerned about 'vexatious' litigation spoke about the length of time involved in ACAT appeals and whether ACAT decision-makers had the time and relevant expertise to hear planning matters. These are genuine issues and they relate to resourcing for ACAT. They can be addressed with better resourcing and do not need a fundamental restriction of rights. Our Committee has made a recommendation that ACAT be appropriately resourced and I believe this is a better approach.

Our Committee also heard concerns about losing rights to appeal, particularly on environmental grounds. Under the current *Planning and Development Act*, third parties can only appeal in limited circumstances. They must have lodged a submission during consultation and they must also prove they may suffer a material detriment from the development. We also heard about other non-legislative barriers, such as having the time and expertise to run an appeal and having the funds to pay the application fees.

The Planning Bill preserves some areas of appeal. It makes at least one significant reduction in appeal rights. Schedule 7 sets out when third parties are exempt from appealing matters in ACAT for merits review. Schedule 7 has removed the right for third parties to appeal an Estate Development Plan in a greenfields area. The consultation draft of the Planning Bill allowed rights of appeal on Estate Development Plans in greenfields areas, but the tabled version of the Planning Bill has removed it.

ACT Government has made certain commitments to limit urban sprawl. The ACT Greens have made a stronger commitment because we want to ensure that at least 80% of new development will be infill, with a view to no more urban sprawl. Both policies recognise that greenfields areas of Canberra are precious. They are often in or near remnant or critically endangered natural temperate grasslands and woodlands and they often provide habitat for plants and animals, including threatened species. They are also often wildlife corridors. They also often contain areas of significant cultural value.

I am concerned that removing this right of appeal means no one can speak up for the environment or for First Nations cultural rights in greenfields areas. I am also concerned that this right has been removed without an explicit conversation. I note that our Committee made no recommendations about appeal rights and this complex area needs further work.

Territory Priority Projects

Under the current *Planning and Development Act*, the Minister can call in a project if it meets certain public interest tests and if there has been sufficient consultation on the project. The Minister need not tell the community or stakeholders that a project may be called in. It comes as a surprise to the community. There are no rights to appeal a call-in to ACAT.

The Planning Bill removes call-in powers and instead introduces Territory Priority Projects. Call-in powers are controversial and I am glad to see that this process has been removed. However, the Bill has not yet struck the right balance on accountability for the new process.

The Territory Priority Project process in the Bill allows Ministers to declare a project via a notifiable instrument, rather than a disallowable instrument. This means it is not subject to Legislative Assembly scrutiny and the Assembly cannot be held to account for it. Given that Territory Priority Projects cannot be appealed via ACAT, political accountability is required to ensure there is some accountability on these rare and major decisions.

The Bill does not require that sufficient consultation has occurred on the project. This provides less protection than what is in the current *Planning and Development Act*, which requires the Minister to assess the quality and sufficiency of consultation before a project can be called in. That protection was added to call-in powers after the ACT Green led amendments in 2018 to the *Planning and Development Act 2007* to ensure there was sufficient community consultation prior to the use of on call-in powers. The Bill has chosen to drop this requirement.

The Bill sets out three key public interest tests but says a Territory Priority Project need only meet one of three tests. The tests are that a project must achieve a major government policy outcome of significant benefit to the people of the ACT OR substantially facilitate a future planning outcome in relevant policy OR be a significant infrastructure project of significant benefit to the people of the ACT. These are good public interest tests and I cannot imagine a territory priority that doesn't meet all three. The earlier consultation draft of the Bill set out three public interest tests and required that

all three public interest tests be met, in addition to the need for sufficient community consultation. The Bill should apply all three tests.

The Bill allows Territory Priority Projects to be public or private projects. Our Committee heard some evidence on this. The only convincing evidence I heard for a private project that had sufficient public interest was for community housing.

Our Committee made recommendations that a Territory Priority Project declaration should be a disallowable instrument and that it should not be made unless sufficient consultation has occurred. I stand by those Committee recommendations. However, I add two more to the list. Territory Priority Projects should be limited to public projects and community housing and should meet all three public interest tests.

Management of Public Land

Our Committee heard evidence on the management of public land during hearings. In particular, there is interest in the management and use of public land, and the need for greater public involvement in decisions for the management of public land.

This issue comes up frequently for this Committee. The management objectives for our public spaces, nature reserves and lakes are out of date. They have not changed in the last 15 years. Our environment is facing different and complex challenges. The ACT Government declared a climate emergency in 2019. We are experiencing a biodiversity extinction crisis. We must manage our public land with a view to ensuring its conservation and improvement.

General Comment

This is the biggest piece of legislation that will go through this Assembly in this term. The Committee had an extremely limited amount of time to go through the Planning Bill. Our secretariat staff did an amazing job and worked extended hours to get this report finished. Stakeholders and the community voiced significant concern that they did not have enough time to consider the Bill properly. I remain concerned that neither the Bill nor our Committee inquiry have covered everything in adequate detail. I am, however, reassured by the amount and quality of submissions to our inquiry and I thank the secretariat, the participants and my colleagues for their work.

Additional Recommendations

I support all Committee recommendations. In addition, I make five further recommendations.

- A. That ACT Government should amend the Bill to restore the current right to appeal a development approval in greenfields areas.**
- B. That ACT Government should review rights of appeal in the Bill and preserve current rights of appeal.**
- C. That ACT Government should amend section 215 of the Bill to ensure that a Territory Priority Project must meet all three public interest tests.**
- D. That ACT Government should amend section 215 of the Bill so that only public projects and community housing can be declared as Territory Priority Projects.**
- E. That ACT Government should review and update the management objectives of public land so they are fit for purpose in the current climate.**
- F. That the Assembly only pass the Bill with significant amendments that address the recommendations and concerns raised in this inquiry.**



Jo Clay
21 December 2022

Appendix F: Additional comments – Ms Suzanne Orr MLA (Deputy Chair)

Additional Comments to the Standing Committee on Planning, Transport and City Services Report, *Inquiry into the Planning Bill 2022*.

To date the members of the Standing Committee on Planning, Transport and City Services (the Committee) have maintained a commitment to work collegiately to reach a consensus on the views taken by the Committee. While this may mean on occasion a recommendation or recommendations made by the Committee are not exactly how one member would necessarily approach the topic, it has meant that the recommendation or recommendations made by the Committee are a true reflection of genuine deliberation by all parties and perspectives in The Legislative Assembly.

I see this approach as removing pure politicking from the Committee process and delivering on the committee's function of providing genuine scrutiny and advice to the Legislative Assembly on matters before it for consideration. As a member of the Committee, I have been proud of the scrutiny we have provided to the work of the Legislative Assembly through this approach.

The Committee adopted the same approach for this report and has made several consensus recommendations to improve the Bill. As the Committee has made these recommendations through a deliberative consensus based approach it is fair to say I feel more strongly about some recommendations than others, but I would encourage genuine consideration of all recommendations put forward by the Committee.

In particular I draw Members attention to the following recommendations:

- Early consultation (recommendations 6 and 7)

People care about where they live and the quality of their built and natural environments. It almost goes without saying that people will have a view on proposals that alter or change this.

Best planning practice acknowledges that genuine engagement between the proponents of development and the community that will be affected by the development presents the best opportunity for reconciling any differences of opinion and gaining community support for a project. The earlier in the process this engagement happens the better. It is far easier to adapt a proposed development earlier in the process than later.

The key to this however is that the engagement is genuine, that time is given for suggestions and concerns to be worked through, that community is listened to, and projects adapted to reflect their input, and that community is open to accepting when design or development constraints provide genuine limitations on what can and cannot be adapted.

I acknowledge the view of the ACT Government that the pre-DA consultation was not working but rather than drop the practice all together I believe an alternative practice should be developed as the benefits from early engagement are far too important not to have and should be a standard practice within our planning system.

- Government Landscape Architect (recommendation 47)

Canberrans have always been proud of our City in A Landscape and being a City in A Landscape is something we should continue to honour in my opinion. Yet the landscape plan of the original designers of the city needs to be considered for its suitability in the present and future. As our built form changes, the impacts on the landscape will also change and we should be making informed and considered decisions about how we can maintain nature in our city.

We know that responding to climate change is one of, if not the, greatest challenge of our generation. The way our built and natural environments integrate will provide opportunities for the response to climate change as well as prevention of some of the factors that lead to climate change.

We also need to recognise that our appreciation of the landscape did not start with settlement and that there is a significant task to facilitate connection to country. We need have the advice of traditional custodians reflected in our current and future practices.

A Government Landscape Architect and the advice they would provide to Government would drive this critical work and I support the creation of the role.

- Territory Priority Project as Disallowable Instruments (recommendation 34)

Some community associations indicated in their evidence that section 215(2) of the Bill should be amended so that Territory Priority Projects are a disallowable instrument rather than a notifiable instrument. While some community associations raised this matter, I note industry representatives or professional bodies did not raise objection to the clause as currently proposed. I also note that some industry and professional bodies in their submissions provided testimony on the accountability and scrutiny of the declaration of Territory Priority Projects that differed from the views put forward by some community associations. For example the Planning Institute of Australia (ACT Division) stated in their submission:

“We note that the first draft of the Bill included the Chief Planner as the decision-maker and that the current Bill includes the Minister as decision-maker. We consider that an independent panel as decision-maker would facilitate greater transparency in the process. As the Minister initially declares a project as a Territory Priority Project, the Minister then having the final decision-making role suggests to the community that the final outcome is a ‘fait accompli’ and this could cause the DA assessment process to be compromised.”

The ACT Law Society stated in their submission:

“Section 215 (1) of the Bill requires that a Territory Priority Project declaration be made by both the Chief Minister and the Planning Minister. This seems to be a very high threshold of Ministerial endorsement for a declaration. With the test of what proposals will qualify for Territory Priority Project status already being a rather high benchmark, we query why there also needs to be the requirement for the two Ministers to declare the proposal as a Territory Priority Project.”

The Property Council of Australia (ACT Division) stated in their submission:

“We acknowledge that there are wider benefits gained from the establishment of a more transparent and less politicised process using the Territory Priority Projects.”

When an instrument should be notifiable or disallowable is a complex policy question. While the ability for the parliament to disallow an instrument presents an increased level of political scrutiny it also politicises the process which in turn increases the level of uncertainty for a project. Before agreeing to such a significant change, I believe it is important for more perspectives to be canvassed on the matter and a broad consensus formed.

Unfortunately, the Committee was not able to reach a consensus on whether the bill should or should not be passed following consideration by the ACT Government of the recommendations made by the Committee. During the inquiry process the Committee heard a number of divergent views on this matter from witnesses to the inquiry. My takeaway from the evidence provided was that on balance and following consideration of the matters raised in the Committee report the Bill should be passed.



Suzanne Owen MLA
21/12/22

Appendix G: Additional comments – Mr Mark Parton MLA

Additional Comments Report - Mr Mark Parton MLA

Introduction

The Committee inquired into the 2022 ACT Planning Bill and I am providing my additional comments on the bill as noted below. I also note my appreciation for the time and effort community stakeholders have given as part of this process and note my appreciation for the cooperative and constructive work of this Committee.

The Committee was able to agree on a series of recommendations in our exhaustive deliberations on this inquiry into the Planning Bill and they are included in the Committee's report, however I felt the need to present additional comments because there were several most important matters on which we could not find consensus. As such I offer these recommendations.

Recommendation 1: I recommend that the Bill not be passed

The magnitude of the amendments suggested by the Planning Committee and more importantly by those who gave evidence at the hearings is such that I feel the only real way forward it to start from scratch in the drafting of a new Bill. The significant lack of reform of the governance arrangements in tandem with the new reforms means the new system is not appropriate and not in the community's interests. The proposed accumulation of power within a single authority or office holder and restriction of Assembly oversight risks further decreasing the community's trust and confidence in the ACT's planning system.

Under the proposed arrangement, the Minister and the Chief Planner could justify any development as 'producing a good outcome' with minimal community input and Assembly or independent oversight as long as it fits within the interests of the decision makers.

As much as anything the absence of an independent review into the governance arrangements of the planning system is the primary reason that the Bill should be opposed notwithstanding the fact that such a review is contained in the recommendations within the consensus report. This member is of the belief that the government will acknowledge that recommendation before batting it away.

Recommendation 2: If the Bill is passed, I recommend that the Light Rail sections under Territory Priority Projects should be removed and this project should follow the same processes as any other project in regards it's declaration as a TPP.

Recommendation 3: I recommend that desired outcomes should be much more clearly defined and specified in the Bill. These outcomes should not be ambiguous. There should be provision of a 'test' that could be applied to determine whether the required level of outcome is achieved.

Recommendation 4: The Bill should not lessen the ability for third parties to seek reviews of key planning decisions. I'm not in a position to recommend specific changes to this framework given the short timeframe and my lack of access to expert or directorate advice on these matters, but suffice to say, I am of the view that the Bill is far too restrictive on those third party appeal options.

Recommendation 5: I recommend that the government amend section 215(2) of the Bill to ensure that a Territory Priority Project is a disallowable instrument. Outcomes focus has strong potential to be innovative and contribute positively to Canberra, but suitable checks and balances must be established. Use of disallowable instruments rather than notifiable instruments regarding Ministerial directions, major plan amendments and TPP declarations will contribute towards increasing Assembly oversight which I believe to be extremely important.

Conclusion

In closing, I believe that the fundamental purpose of the Bill appears to be to allow urban infill to occur quickly and easily with minimal disruptions by the community, environmental or other interest groups. The Bill is anti-community and anti-environment and should not be passed in its current form.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Mark Parton MLA
20 December 2022