

INNER SOUTH CANBERRA COMMUNITY COUNCIL

Planning and Development (Project Facilitation) Amendment Bill 2014

Submission to the Standing Committee on Planning, Environment and Territory and Municipal Services

The Inner South Canberra Community Council (ISCCC) appreciates the opportunity to comment on this Bill. As discussed below, we nevertheless believe that the consultation process has been so truncated as to be almost meaningless and we urge that more time be allotted for Committee consultation on and consideration of the detailed provisions of the Bill. We believe that many aspects of the Bill have been insufficiently thought through and in many respects are counter-productive.

Consultation

The ISCCC asserts that the ACT Government and the Assembly has allowed insufficient time for consultation to occur on such a potentially far-reaching piece of legislation.

The Bill was introduced to the Assembly on 20 March 2014, the last day of the March sittings, and, for some inexplicable reason, the Government attempted to secure its passage on 8 April 2014, the first day of the April sittings.

At the last minute, and no doubt in response to widespread expressions of alarm, the Bill was referred to the Standing Committee on Planning, Environment and Territory and Municipal Services. However, the timetable allowed for this process is also regrettably and embarrassingly truncated.

Only two weeks were allowed for lodgement of submissions on what is a very complex and significant measure. Only one day has been allocated for a public hearing and the Committee's report is due by 6 May, the first day of the May sittings.

No explanation has provided for the undue haste with which the legislation is being progressed. We do not believe that massive reforms to the planning system should be seen as the remedy for cyclical economic difficulties. We are all of us the current custodians of Canberra for future generations and short-sighted and inadequately considered measures taken now can have long-term consequence for the liveability and heritage values of this city, which will themselves impact on potential future economic opportunities.

We note that greater opportunity for consultation has been provided for Government initiatives of similar or less consequence. For example, in relation to Draft variation 306, six months was allowed between the reference to the Committee and the release of its report. This stands in stark contrast to the four weeks allowed for this bill.

Compounding the compressed consultation period has been a lack of information about the proposed changes. These include:

- lack of any meaningful discussion on what problems exist in planning arrangements which need to be addressed by the proposed reforms. In short, the case for change has not been made; and,
- lack of any strategic discussion on the desirability of the reforms and their potential long-term impact on Canberra's amenity and social and community fabric.

As proposed by Mr Leon Arundell, inclusion of a summary to the explanatory statement and a table comparing the draft legislation with the old, would have assisted community understanding of the measures being proposed.

The ISCCC recommends that the time allowed to the Committee for reporting on the Bill be extended to 7 July 2014 (allowing 90 days for consultation and consideration).

Specific concerns about the Bill

The ISCCC has grave reservations about many aspects of this new legislative scheme.

1. Inadequate consultative arrangements

The consultative arrangements identified in the Bill do not, in our view, provide sufficient opportunities for timely, considered and quality community engagement. In our view, these deficiencies include:

- 30 working days do not provide enough time for community analysis and comment on complex 'special precinct areas' and 'significant project declarations';
- unavailability of relevant documents on-line and for free; and
- absence of a requirement to publish information on the ACTPLA website.

As proposed by the Griffith-Narrabundah Community Association (GNCA), the Bill should include a requirement that all notifiable instruments, notices, declarations, variations, draft declarations, draft variations and consultation comments be published on the ACTPLA website.

We believe that enhanced opportunities for community consultation will actually improve the quality of developments and projects to be advanced under the new scheme. Currently, significant responsibility has been placed on the community and local representative bodies, such as community councils, to draw attention and seek action in relation to, non-compliance with planning laws. Instances of non-compliance will likely increase in proportion to any diminution in the scope for public input.

As pointed out by Mr Arundell, it is odd that the larger and more complex developments will, under the proposed new arrangements, be subject to less scrutiny than smaller and less intrusive developments. Further, the proponents of these major precinct and project works will, quite properly, have spent many months or years assessing and developing their proposals. It is unfair to expect relatively under-resourced community organisations and individual citizens to respond adequately in the truncated time-frames proposed in the Bill.

2. Call-in Powers

Despite assertions and assumptions to the contrary, it appears that Ministerial call in powers have not been removed in relation to the future developments that will fall within the purview of this Bill. Even were the Assembly to disallow a special precinct variation or project of major importance, the proposal could still nevertheless be called in by the Minister. This casts significant doubt on one of the key justifications of the Bill.

3. Political involvement in planning decisions

The ISCCC commends to the Committee the GNCA analysis in its submission of the way in which the Bill will further politicise ACT planning processes by transferring responsibility for many key decisions to the Government or the relevant Minister. As stated by the GNCA, 'given the difficulties that the introduction of politics into planning has caused in other jurisdictions one might have hoped that a public discussion of the pros and cons of such a step might have been considered desirable'.

4. Need for more objective criteria

In its submission to the Committee on the Bill, the GNCA identifies numerous instances of vague and ill-defined concepts in the Bill which further reduce the objectivity and transparency of decisions made under the new proposed arrangements. It is not proposed to repeat the GNCA analysis here, other than to indicate our support for its specific suggestions in this area, ie: clear, explicit and testable definitions of key terms be inserted into the Bill, to enable a reasonable assessment of whether a project meets these criteria.

ISCCC supports Recommendation 5 in the GNCA submission in relation to these aspects of the Bill.

5. Lack of appeal rights

One of the more disturbing aspects of the Bill is the lack of any appeal rights in relation to any decisions taken under these new provisions. As the GNCA argues in its submission on the Bill,

‘One might wonder why anyone should bother about the [planning] criteria [in the Bill], as the question of their appropriateness or relevance becomes merely academic. This situation is unsatisfactory.

The Bill should be amended to ensure the availability of judicial review of all decisions made under the new scheme. There should also be a much more level playing field in relation to the conduct of appeals: currently well-resourced developers are able to gain advantage in the relevant tribunals and courts through their access to expensive legal counsel well beyond the means of members of the local community and their representative groups. The Combined Community Councils of Canberra has written separately to the Government seeking implementation of promises made before the 2012 ACT elections to provide funding to assist community councils in planning advocacy matters and the creation of a Community Planning Advocate.

6. Heritage

The ISCCC shares the concerns of the ACT National Trust, the Australian Institute of Architects, the Conservation Council and the Heritage Council. The inner south comprises many of the original Canberra suburbs, some of which are nearly a century old. Politically-endorsed, commercially-driven development on a grand-scale could wreak havoc on the very substantial heritage values which are still very desirable features of these historic precincts.

The ISCCC, its constituent residents’ groups and the community generally are constantly working to maintain the heritage values and the amenity of our suburbs and the sweeping measures proposed in the Bill will add an additional burden to already overworked and under-resourced volunteers.

There have been two extensive reviews of the identification, conservation and protection of the ACT’s heritage. The first review preceded the *Heritage Act 2004*. The second review resulted in the Marshall Report 2010. This report acknowledges and responds to expressed concerns about the loss of original heritage fabric and the problems of compliance.

In 2013, apparently in response to the Marshall Report, the *Heritage Legislation Amendment Bill 2013* was tabled. However, this Bill, while failing to address the concerns highlighted in the Marshall Report, proposed giving the relevant Minister extraordinarily wide ranging

call-in powers; thus, placing the process of nomination, conservation and protection of this city's urban and rural heritage squarely in the political arena.

To date, there has been no comprehensive, official response to the Marshall Report. Meanwhile, the Planning and Development (Project Facilitation) Amendment Bill 2014 , while purporting to remove the Ministerial call-in powers contained in the *Heritage Legislation Amendment Bill 2013*, proposes powers which would be equally as damaging to the Territory's heritage.

The ISCCC recommends that question of heritage values be resolved before this proposed legislation proceeds. The Standing Committee should urgently seek expert advice from the ACT National Trust, the Australian Institute of Architects, the Conservation Council and the Heritage Council.

7. Existing planning commitments

In providing comment on the Bill, ISCCC is very conscious that many existing proposals and initiatives designed to protect the amenity and heritage of Canberra's suburbs for its residents have been implemented only half-heartedly or not at all. The significant community trade-off proposed in the Bill is not necessarily one that, based on experience, the community can take for granted. There has already been scant regard given in to previous planning initiatives in the existing Territory. These include, for example:

- neighbourhood plans which were developed in the period 2002-2004 (applying predominantly to inner north and inner south Canberra suburbs), and to the *Garden City Values and Principles* published in March 2008 (again, applying to inner north and inner south Canberra suburbs); and,
- character elements arising from these should already have been identified and incorporated into suburb precinct codes so that the residents are fully informed of the unique character of their suburb, and the potential sacrifices in prospect arising from implementation of the proposed Bill (and indeed any future development). The need for this is amplified by common emerging threads, including urban intensification, global warming and sustainability, and population ageing.

Examples relating to preservation of the Garden City character of Canberra include:

- ensure protection of increasingly valuable urban open space;
- more effective integration of heritage values;
- maintenance – and more general application in some instances - of building setbacks, heights, and streetscapes;
- application of plot ratios that actually represent the actual plot ratio occupied by the building(s);
- more appropriate zoning;
- more effective integration of people movement – and the consequences in Canberra of high volumes of motor vehicles - into planning.

The ISCCC would also like to note that the measures proposed in the Bill are not directed at long term sustainability, and apply to the built form in the narrowest sense, with very limited exceptions. For example, there is cursory attention to landscaping, but even then, only with regard to registered trees. There is also no mention of people movement - public transport, motor vehicles, cyclists and pedestrians.

8. Symonston

The ISCCC notes with concern that fast-tracking of the Symonston secure mental health facility is a feature of the Bill. We re-iterate our previously-expressed concerns that the original consultation with local residents in relation to this project was seriously deficient. More recently, residents' questions about certain aspects of this development have not been answered adequately if at all. This project is in fact is a clear demonstration of the dangers of a system of planning approvals based on Assembly endorsement in individual cases.

All major parties in the Assembly are united in their assessment of the need for this facility to proceed quickly at this site and the residents have been unable to engage with local Assembly in expressing their concerns. This is made doubly hard in the Molonglo electorate, in which the inner south is located, where the ALP and Greens MLAs are all members of the Government and the Opposition has failed to engage. The political system has simply not worked on this occasion. Perhaps an expanded Assembly will help address this lack of local representation.

The residents of Symonston are justifiably concerned that the measures embodied in the Bill could be used to ram through other projects in this area. They are currently debating with the Government the merits of a proposed co-location of the RSPA and government pound on another sensitive site in Symonston. This initiative was originally announced in the absence of any local consultation at all, a complete failure in our view of citizens' rights to be informed of and to engage with the Government on significant developments in their 'backyard'. We have been pleased with the consultation we been afforded in recent times in relation to this proposed development and note that there appears to be active efforts to find alternative sites. But, as we understand it, the new Bill, if passed as currently drafted, would enable this project to be rushed into law following the truncated consultative processes complained of above.