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The Committee Secretary
Standing Committee on Planning, Environment and Territory and Municipal Services
Legislative Assembly for the ACT
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CANBERRA ACT 2601

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Dear Secretary,

PLANNING AND DEVELOPMENT (PROJECT FACILITATION) AMENDMENT BILL

The Griffith/Narrabundah Community Association (GNCA) has made a submission to the Committee expressing strong concerns about what is being proposed in the Bill and I, as a member of the Association, support the general points and recommendations that the Association has made.

There are several concerns and problems with the Bill that I consider warrant special emphasis.

- 1. More time needs to be allowed for public comment and the Committee's consideration of the Bill. The Committee should seek the Assembly's agreement to an extension of time.**

The Bill is proposing changes of a radical nature to our planning system and processes. The Bill itself is lengthy and complex, as is the associated documentation. There appears to have been no public consultation on the proposals and the time now being allowed for public comment on the Bill is ridiculously short. It is clear from comment in the media that many share the view that more time is needed for consideration of the Bill's provisions, especially given the importance of the issues involved. There is no possible justification for rushing the Bill through in the way that it is currently being handled.

- 2. The case for introducing a new procedure to vary the Territory Plan through a special precinct area variation has not been made. This proposed fundamental change to our planning system should be dropped from the Bill.**

The Bill is proposing quite fundamental changes to the way that ACT planning law works. Yet there is little acknowledgment in the Minister's Explanatory Statement of the radical nature of

these changes. Nor has an adequate explanation or justification for the changes been provided. There has been no attempt to identify major flaws in the existing planning process which the legislation is intended to resolve but simply an assertion that the changes are necessary to deal with claimed “rigidities” in the planning system. .

The current Territory Plan’s zonings and development codes, together with the general rules that apply, have been developed over a period of time and generally after extensive consultation. They reflect the combined input of planning professionals, other experts, residents, community groups and other interested bodies, as well as the Government itself. There are established ways in which these can be changed and in general these provide proper opportunity for consultation, scrutiny and debate before changes are agreed and implemented. This approach would seem to be based on a generally accepted view that Canberra’s development should be based on sound planning principles that are clearly articulated and on a plan that is guided by a long term vision. There is an expectation that zonings and related provisions as to what is permissible in those zones will not change significantly unless there is general agreement that there are very good reasons for doing so. Long term stability in planning matters is regarded both by business and by residents as important because of the investments involved.

It has also been accepted that there should be provision for appeals against Planning Authority decisions where it can be demonstrated by the appellant that a decision is not consistent with the provisions of the Territory Plan and other relevant legislation.

The Minister is now proposing that the Territory Executive be given very significant new powers to make changes to the Plan without going through the normal draft variation process. It is proposed that the Territory Executive can vary the Territory Plan through a special precinct area variation, excising a designated area from its current zoning for priority development and introducing new and presumably far less onerous development rules. The consultation period envisaged is significantly shorter than for a normal draft variation and the variation will be a disallowable instrument rather than being a legislative change that requires Assembly assent. There is, in addition, provision to apply a so-called “restriction” which means that neither the Heritage Act nor the Tree Protection Act would apply to development approvals in the special precinct. Nor would there be provision for normal appeal processes. The public benefit and importance criteria for seeking a special precinct variation are so broad as to be meaningless.

It is simply not clear why this sort of change is either necessary or desirable. **In particular it is not clear why the designation of a special precinct with development rules appropriate to that precinct could not be achieved by the normal draft variation process or project specific legislation.** It is also not clear why normal appeal rights should be abolished. It is difficult not to conclude that there is real risk that the special precinct variation if it is embedded in the legislation will become the preferred route for most changes to Canberra’s planning regime.

3. **The proposed use of the Disallowable Instrument Approach is inappropriate. Any special precinct variation should be subject to normal legislative processes (i.e. require the Assembly’s assent)**

As noted above, it is being proposed that the special precinct variation will be a disallowable instrument rather than being a legislative change that requires Assembly assent. This is inappropriate given that significant and complex changes to the Plan may be involved.

It is not enough to argue that the proposal for a special precinct area variation would have been subject to a consultation process since the Executive would have the power to make whatever changes it judged fit to the proposed variation before the disallowable instrument was tabled – ie the changes to the Plan may differ significantly from the version that went through the consultation process.

4. The Proposed Restriction Declaration should be dropped

The Bill proposes that a restriction may be made for special precinct variations, meaning that the Heritage Act and Tree Protection Act would not apply. This provision is of great concern especially given that special precinct variations are likely to focus primarily on older areas in Inner Canberra where heritage values and tree values are of particular significance.

The Explanatory Statement tries to argue that the proposal is not a significant departure from the existing planning system because the Act already permits the planning and land authority to approve DAs contrary to advice provided by the Heritage Council or the Conservator of Flora and Fauna in limited circumstances.

This is a bit of sophistry on the Minister's part. There are two important points to be made. First, in the current system advice has to be sought and is therefore available to all in the consultation process and to the decision maker when considering the matter. Second, there are limitations to the circumstances in which the advice can be overridden. The Minister is proposing that heritage and tree protection considerations would cease to exist and seeking the advice of the experts would simply become irrelevant.

5. The proposed changes in the roles of the Minister and the Planning and Land Authority are inadvisable

The Bill significantly changes the way planning in the ACT operates by involving the Minister more in planning matters. Not only will the Government have the power to direct the Planning and Development Authority to prepare draft variations to identify special precinct areas and to decide on the final form of the special precinct variations and the declaration of projects of major significance, but the Minister will be the decision maker (displacing the Planning and Land Authority) in a whole range of decisions in relation to the granting of development approval following on from the declaration of a project of major significance, or in relation to a development application that the Minister has decided to call in.

The net result of all these changes is that planning in the ACT will become less informed and guided by planning expertise and much more politicised.

- 6. The criteria for making a Special Precinct Variation and a Major Project Declaration are far too vague and would need to be more rigorously defined if the Bill were to proceed.**
- 7. Appeal rights need to be retained. They are an important part of our planning system and the case for their removal has not been made. The development of more objective criteria would both assist better decision making and reduce the number of appeals**

In summary, there is virtually nothing in the Bill as presently drafted which should be supported. The Committee should recommend that the Bill be withdrawn, noting that there are well established avenues for making special provisions for the sorts of high priority projects that the Government appears to have in mind – ie by the normal draft variation process or by project specific legislation.

Yours faithfully

Margaret Fanning

22 April 2014