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Committee Secretary
Joint Standing Committee on the National Capital and External Territories
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AUSTRALIA

I write on behalf of the Canberra Planning Action Group (CPAG) to brief the Committee on our concerns that the conflicting roles of the ACT Government – it is Canberra’s biggest developer being in control of land release & development potential, manages the ACT Planning Authority and is the owner of all land in the Territory – effectively mitigates the development of Canberra in ways that enhance Canberra's significance to the nation.

We also put forward for consideration by the Committee a proposal to address this problem.

BASIS FOR OUR CONCERN

We are Canberrans concerned about a serious decline in governance in the ACT and the impact this is having on fairness, sustainability and livability in Canberra. We do not see this as just a local issue, as there are similar problems in all Australian jurisdictions. Canberra is, however, our home.

Canberra is the Nation’s Capital and the ACT Government is required by Commonwealth legislation *“to ensure Canberra and the Territory are planned and developed in accordance with their national significance”*. Consequently, Canberra, as originally envisaged, is a deliberate attempt to implement, in a distinctively Australian setting, the ideal of the “Garden City”, with its goals of equity, social harmony and harmony with nature. Canberra was to be a city not just in nature, as all cities are, but with nature in it.

As such, Canberra should be a beacon for all Australian cities, the ACT a model for all Australian jurisdictions. It should be something of which Australians are proud not just because it is the national capital and has many fine buildings and institutions but because of what it represents socially and environmentally. We believe, however, that this not just nationally but globally unique ‘utopian’ legacy is being trashed by the ACT Government.

We have identified this in four central policy areas: social housing and housing affordability; public transport, planning reform and climate change adaptation.

We have separately written papers on these areas in which we spell out our specific concerns in more detail. These are summarised below, together with links to the full paper, and each covers matters for which both the Federal and ACT Governments have responsibility:

1. Social housing and housing affordability:

Here as elsewhere in the country these are in dire straits. We have, at the moment, the highest rents and have just endured the most explosive rise in house prices in the country. The ACT Government claims to be committed to improving the situation but its policies out to 2025 will barely restore the amount of public housing lost through asset recycling. It is only all the more galling that instead of ploughing the money it gets through asset recycling back into public housing, the government has diverted the money into light rail.

[THE CRISIS OF SOCIAL HOUSING IN CANBERRA – AN OVERVIEW \(canberraplanningactiongroup.com\)](http://canberraplanningactiongroup.com)

2. Public Transport:

The ACT Government has invested heavily in a light rail project which has sucked up significant amounts of money and, given the manner of its introduction, has actually undermined the integrity of the system: the integration of light rail with bus services is at best mediocre and we have at least anecdotal evidence of a decline in service in the bus network, particularly in the outer areas. Light Rail Stage 2 requires for its extension to Woden an expensive and thus far undisclosed engineering solution to the problem of crossing the lake and the introduction and retro-fitting of dual power systems, all for no significant gain in travel time to Woden. Finally, even though it has flagged that it will be seeking additional Federal funding for it, the government has still yet to disclose its Business Case for Light Rail Stage 2—all this in the face of publicly expressed concerns of the Auditor-General and the Productivity Commission.

[ACT Light Rail, Tram, Albert Oberdorf, ACT Auditor-General \(the-southern-cross.com\)](http://the-southern-cross.com)

3. Planning Reform:

The draft Planning Act proposed as part of the ACT government's planning reform project threatens to give extraordinary and almost arbitrary power to the Chief Planner. Indeed, concerning matters 'protected by the Commonwealth', it stipulates that, if the commonwealth minister does not give the ACT decision-maker advice about a development proposal *within 10 working day*, this latter may approve the application! The same is proposed with regard to environmental conservation and heritage: if advice is not received from appropriate specialists within 10 working days, the ACT decision-maker may approve!

This is despite the fact that the Planning and Development Act 2007, Sections 60 and 61(b)(i) require the ACT Planning and Land Authority to consult with the National Capital Authority, in preparing variations to the Territory Plan. In addition, Sections 69(c)(i) &(ii) require that when a draft variation to the Territory Plan is presented to the Minister, it must include a written report about the Planning Authority's consultation with the National Capital Authority and the public.

https://www.parliament.act.gov.au/_data/assets/pdf_file/0005/2111909/Submission-30-Canberra-Planning-Action-Group.pdf

4. Climate Change Adaptation and Resilience:

We have real concerns that, given the direction development in Canberra is taking, extensive urban heat islands will be created, with up to 12^o higher temperatures compared to adjacent rural areas. It is likely that planning reform will only push Canberra further in this undesirable direction.

[PLANNING AND CLIMATE CHANGE: TACKLING THE BIG ISSUES NOW \(canberraplanningactiongroup.com\)](http://canberraplanningactiongroup.com)

5. **Walter Burley Griffin's Canberra and his Tramway. The Ideal City of the Future?**

Walter Burley Griffin's unprecedented design of the Australian capital as a decentralized garden city was to counteract the unhealthy living conditions produced by the rapidly increasing urbanization after the industrial revolution. Now, 110 years later, the health of city dwellers is again threatened, this time by climate change and the Urban Heat Island (UHI) effect and the question arises whether Griffin's 1912 decentralized design must be updated or is still relevant for the future of Canberra.

[Walter Burley Griffin's Canberra and his Tramway. The Ideal City of the Future? \(Part One of Three\) \(canberraplanningactiongroup.com\)](http://canberraplanningactiongroup.com)

[Walter Burley Griffin's Canberra and his Tramway. The Ideal City of the Future? \(Part Two of Three\) \(canberraplanningactiongroup.com\)](http://canberraplanningactiongroup.com)

[Walter Burley Griffin's Canberra and his Tramway. The Ideal City of the Future? \(Part Three\) \(canberraplanningactiongroup.com\)](http://canberraplanningactiongroup.com)

ACT GOVERNMENT IS TERRITORIES BIGGEST BENEFITER FROM DEVELOPMENT

The ACT Government benefits in two ways from the land it sells to other developers:

- a. The more intensive development, the higher the sale price it receives;
- b. The more intensive the development, the more annual rates, electricity and water charges, and land taxes it receives.

This problem was identified when the Federal Department of Territories, in conjunction with the National Capital Development Commission (NCDC), was putting in place the ACT Private Enterprise Land Development Strategy in 1987-88 and a proposal was that the incoming National Capital Planning Authority would have responsibility for all of the ACT. This didn't get past first base, the rationale being that the NCDC had successfully developed Canberra for decades.

The difference was that during the NCDC time land was of insignificant value with blocks being sold on an annual rental basis with an upfront payment of about \$200 in the early 1970s. There were a number of reasons why, by 1988, land values had increased markedly. A major factor was that, instead of paying an annual rental, purchasers had to pay the full land value upfront. This put an ACT Lease on par with freehold land and the upfront value increased accordingly.

Because history and a holistic perspective are required when considering planning issues within the ACT, CPAG provided in its written submission two examples of how ACTPLA and the Government have acted to the detriment of the community for many years.

These are long standing going back decades: the issues of attempted development of Kinlyside and the failure to follow the approved Spatial Plan precepts. The first involved ACTPLA and the Government proposing to literally give away to developers a whole suburb; the second adversely impacts on ACT planning covering the whole of the Territory's urban fabric because the ACT Government and ACTPLA have ignored not only ACT Community aspirations and planning principles, but the principles that they themselves set out in the ACT Spatial Plan.

The latest example is contained within its current Draft District Plan in which the ACT Government, presumably without consulting the National Capital Authority which controls this area, proposes high-rise development to turn Adelaide Avenue from "a wide roadway that is difficult to cross into a vibrant, multimodal corridor that better connects into local neighbourhoods in Yarralumla and Deakin".

- Firstly, Adelaide Avenue is designed to be a wide avenue featuring direct views to Parliament House and its conversion into a vibrant, multimodal corridor would still mean pedestrians having to cross it, particularly if the light rail runs down the middle of it.
- Secondly, putting high-rise developments as indicated would need a variation to the current policy that developments along Adelaide Avenue cannot be higher than tree level.
- Thirdly, the proposed development of high-rise building as indicated would come as a surprise to the current land owners which include the Nigerian High Commission, Canberra House of Prayer, Saudi Arabia Embassy and Sri Lankan High Commission.
- Fourthly, the real but unstated purpose of this proposal is the same as the decision to turn projected office buildings in Gungahlin into flats and the intensive development along Northbourne Avenue: to justify the high cost of light rail.

PROPOSED ACT PLANNING ACT NOT BEST PRACTICE BUT OVERLY STRENGTHENS ACT GOVERNMENT PLANNING POWERS

CPAG notes the present Bill diminishes the role of the Legislative Assembly in matters that should be of direct interest to them, e.g.:

- The Legislative Assembly is given NO ROLE in the (metropolitan) Strategy Plan or the District Strategies.
- The Legislative Assembly is given NO ROLE in the 'supporting material' to the Territory Plan, which will contain a lot of the content of the current Plan (e.g., Building Codes) but is not part of the Plan and therefore (presumably) unable to be reviewed by the Legislative Assembly.
- Section 59 of the Planning Bill requires a 'supporting report' for "major plan amendments", but this requirement is OMITTED for the NEW Town Plan under s.605 of the Bill. THIS SHOULD BE STRONGLY OPPOSED!
- There is in fact a "Supporting Report" for the Town Plan changes (on 'YourSay') but it's strong on rhetoric and it's deficient in the detail of WHAT they've done with the current CODE provisions and WHY.

Richard Johnston, a former SES Planner with ACTPLA, has assessed the current ACT Planning Act and the proposed ACT Planning Act against the Leading Practice Model for Development Assessment in Australia', a nationally agreed benchmark document that remains the 'state of the art' for development assessment systems.

As shown in the chart below:

- The current ACT planning system is based on these agreed 'leading practices', so, if ACTPLA follow these as closely as possible it would deliver better, faster, cheaper assessments.
- The proposed ACT Planning system departs radically from these agreed 'leading practices', without any apparent justification or logic.

The Practice Model that is a guide for developing efficient, effective and nationally harmonized development assessment systems that the Industry Commission estimated will achieve potential savings of \$1billion a year nationally from improvements to planning and building regulations and processes.

It streamlines development assessment and enables lost resources to be redirected to more productive outcomes. It would be more effective for ACTPLA to apply them to the current ACT Planning system rather than introduce a new Planning System that departs radically from them.

DAF MODEL FOR DEVELOPMENT ASSESSMENT – CURRENT & PROPOSED ACT PLANNING SYSTEMS

Leading Practices:	CURRENT ACT SYSTEM	PROPOSED ACT SYSTEM
1. Effective policy development	YES - except for Strategic Plans and some Plan Variations where Legislative Assembly (LA) is excluded	NO – removes important ‘Supporting Documents’ from LA scrutiny/approval. ‘Criteria’ (referred to in DAF model) replaced by vague ‘outcomes statements’
2. Objective rules and tests	YES – “criteria provide certainty to both the community and applicant”	NO - criteria replaced by vague, difficult to understand and poorly worded ‘outcomes statements’
3. Improvement mechanisms	NO – no effective on-going evaluation of the system	NO – and yet ACTPLA proposes major changes to the current system without justification
4. Track-based assessment	YES	NO – all development are mixed together
5. Single point of assessment	YES – but enables ACTPLA to override agency advice (e.g., on heritage, trees)	YES – but gives ACTPLA even more power to override for “better planning outcomes”
6 Notification	YES – but some problems need to be fixed with Pre-DA Community Consultation	NO – Pre-DA Community Consultation proposed to be abandoned; poor attempt at Consultation ‘principles’ in the Bill
7. Private sector involvement	YES – for building control, which has not gone well	YES – no change
8. Professional determination for most DAs	YES – but the degree of ‘	NO – Abolition of ministerial ‘call-ins’; more scope for avoiding assessment through non-statutory TECHNICAL SPECIFICATIONS.
9. Applicant appeal	YES	YES

The ACT Standing Committee on Planning, Transport and City Services clearly agreed that the proposed Planning Bill was inadequate because it made 49 recommendations for change, all in line with CPAG’s submission excluding only our proposal for an Independent Planning Commission.

The ACT Planning Minister has now tabled his [response](#) to the Committee’s 49 recommendations, 20 of which he has just noted or rejected, claiming that various expertise already exist within the EPSDD and therefore no extra bodies such as an independent planning commission or expert planning panels are needed.

INDEPENDENT PLANNING COMMISSION

CPAG, in its submission to the ACT Standing Committee Inquiry on ACT Planning Bill, proposed the establishment of an ACT Independent Planning Commission similar to the Northern Territory Planning Commission to:

“Set the strategic framework for integrated land use, transport and infrastructure planning in the ACT, work with the community to deliver more sustainable and cost-effective outcomes for the community that reflect environmental and heritage values”

The [Northern Territory Planning Commission](#) is an independent statutory whose purpose and authority can be summarised as:

- It sets the strategic framework for integrated land use, transport and infrastructure planning, working to deliver more sustainable and cost-effective outcomes for the community that reflect environmental and heritage values.
- It must consult with the community to develop strategic plans and policies for inclusion in the Territory and Plans.
- Its advice must be sought on significant development proposals.

CPAG believes an ACT Commission's full-time membership should also be limited to seven people with relevant skills (planning, architecture, engineering, environment, heritage, community, indigenous) and demonstrated independence. The measure for "demonstrated independence" needs to be set and would probably need for selectors to look interstate, such as is done in the NT and WA.

The selection panel would' of necessity need to include members of the ACT Labor, Greens and Liberals and the National Capital Authority as well as two community representatives selected by the community councils.

The ACT Planning Commission should also have specific responsibility for strategic planning, at arms-length from government and be charged with conducting comprehensive community consultation, particularly if developing "district strategies". It has to be sensitive to local social and economic conditions and reflect the aspirations of local communities and only secondarily the government's agenda.

The ACT Planning Commission should not be involved in detailed policy setting. This would continue to be carried out by ACTPLA, subject to scrutiny by the Assembly committee process (which needs to be given more time and resources to do its job effectively). However, ACTPLA must properly support this scrutiny by the Assembly, by providing detailed reports on what changes are proposed to the territory plan and why. This is particularly important in relation to the Draft 'new' Territory Plan.

Nor should the ACT Planning Commission be involved in Development Application decision-making, otherwise there will be confusion about its role, priorities and processes. Nevertheless, its advice must be sought on significant development proposals.

The ACT Planning Commission must exemplify best practice in **Local Strategic Planning**, as set out in the Planning Institute of Australia (NSW Division)'s Policy Statement July 2012.

- Note in particular from the 'Background' section: "*the goals of local strategic planning are to **protect significant aspects of the local natural and built environment**, guide the efficient and effective use and distribution of scarce resources at a local level and also guide the delivery of key infrastructure **for the benefit of the local communities.***"
- The NSW Local Government Act 1993 requires all NSW Councils to prepare a 'Community Strategic Plan', incorporating the findings and strategies resulting from local strategic planning. This seems to be a good model for an ACT Planning Commission.

LOCAL PLANNING PANELS

CPAG proposes the establishment of Local Planning Panel(s) along the lines of those in NSW to decide 'significant' Development Applications (either in size or attracting substantial objections) – [Local Planning Panels | bmcc.nsw.gov.au](http://bmcc.nsw.gov.au) .

These panels are typically drawn from a register of people with relevant expertise and hold meetings in public, with their reasons being published. CPAG believes this should go a long way to reducing disputation in the process as well as hopefully producing better based decisions and restoring some TRUST in the system.

Local Planning Panels were introduced by the NSW Government in 2018, across Councils in Sydney, Wollongong and the Blue Mountains. The focus of the panel is on the determination of development applications that are contentious. Planning proposals are also required to be referred to the Local Planning Panel for advice. The referral criteria and operational procedures for panels are set by the Minister for Planning.

Development applications are referred to the Local Planning Panel for determination where the proposal:

- Involves a departure from development standards.
- Meets the definition of contentious development.
- Is classified as sensitive development.
- Where there is a conflict of interest.

BUILDING AND CONSTRUCTION CONTROL

There is another (post planning) problem that needs to be addressed - ['We've reached a crisis point': Experts decry ACT building industry | The Canberra Times | Canberra, ACT](#)

The overwhelming majority of high-rise apartment buildings in Canberra are likely to have major defects, industry experts have estimated, with one warning the territory's construction industry has reached "crisis point".

Experts in engineering, waterproofing and strata law have told [The Canberra Times](#) that structural and design flaws would, in their estimations, exist in most new high-rise developments in the nation's capital, ranging from minor to more significant.

They said a number of factors have combined to create the problem, including a lack of regulation, the government's apparent reluctance to punish bad practice, consumer ignorance and Canberra's extreme hot and cold weather.

Their concerns echo complaints detailed in submissions to the ACT Assembly's ongoing building quality inquiry, [which has exposed numerous cases of shoddy construction work in the capital](#)".

The extent of problems in the ACT's construction industry were laid bare, with accounts of shoddy construction work, building delays and owners being left out of pocket by broke builders detailed in submissions to a 2017 government inquiry – ['Scarred by the experience': ACT building nightmares revealed | The Canberra Times | Canberra, ACT](#).

The 2017 Government Inquiry was advised that ACT government inaction effectively meant that apartment owners in buildings above three storeys had "no recourse against their builders whatsoever" to fix defects. One reason is that Access Canberra uses an engage, educate, enforce approach and a risk harm model as outlined in the Accountability Commitment when investigating possible breaches of legislative requirements. Enforcement of legislative requirements is supposed to occur in situations where there is:

- a failure to comply with legislation and standards
- an unacceptable standard of work or conduct.

The ineffectiveness of this approach is illustrated in its last Building Action Snapshot below which demonstrate a

pro-active approach that is not so when compared with the reality as outlined in *complaints detailed in submissions to the ACT Assembly's ongoing building quality inquiry, "[which has exposed numerous cases of shoddy construction work in the capital](#)"*:

From 1 July 2018 to 30 June 2019, Access Canberra

- 589 proactive and reactive inspections across all types of buildings
- 112 cases received regarding building and construction
- During this period 263 cases regarding building and construction were closed

Regulatory action taken from 1 July 2018 to 30 June 2019

- 197 demerit points issued across 50 construction occupation licensees
- 3 Rectification orders
- 11 notices of intention to issue a Rectification order, including where a Rectification order was subsequently issued
- 38 Stop Work notices
- 10 notices directing building work to be undertaken

RECOMMENDATION

CPAG proposes the Joint Committee join with the ACT Government to undertake a comprehensive review of the planning, development and construction in the ACT with the objective of establishing:

- An ACT Independent Planning Commission similar to the Northern Territory Planning Commission;
- Local Planning Panel(s) along the lines of those in NSW to decide 'significant' Development Applications (either in size or attracting substantial objections); and
- A more rigorous Building and Construction Control regime.

Geoff Pryor
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