

WESTON CREEK COMMUNITY COUNCIL

- Your Local Voice -

Email: info@wccc.com.au

Website: www.wccc.com.au

Phone: (02) 6288 8975

ABN: 52 841 915 317

PO Box 3701 Weston Creek ACT 2611

Established 1991

(Weston Creek Citizens Council Inc. – Reg. No. A2637)

11 August 2005

The Planning System Reform Project
GPO Box 1908
CANBERRA ACT 2601

Submitted by email to: planning.systemreform@act.gov.au

To Whom it may concern

Comments on the Proposed Reforms to the ACT Planning System

The Weston Creek Community Council (WCCC) welcomes this opportunity to contribute to the public consultation process on the proposed reforms to the ACT planning system. We appreciate the additional time afforded by the ACT Planning and Land Authority (ACTPLA) for the WCCC to make a formal submission.

The WCCC has been actively involved in Weston Creek as a consultation conduit for the local community since 1991. The WCCC is a non-political, voluntary lobby group representing the residents of Weston Creek and is an informed, active and pragmatic contributor to public debates in Weston Creek. Our website (www.wccc.com.au) has further details about the WCCC.

The WCCC appreciates the on-going support of ACTPLA in this endeavour.

The complexity of the documents released to support the proposed reforms has meant that only general comment has been received from the Weston Creek community to date. However, members of the WCCC Committee have closely scrutinised the Directions Paper and each of the four Technical Papers. The following comments on the proposed reforms to the ACT planning system are therefore a combination of the general comments and the Committee's understanding of the complex material contained in the Reform project's supporting documentation.

Members of the WCCC Committee are available to discuss the comments raised in this paper at a mutually convenient time.

These comments will be made available to residents through our website in accordance with our usual practice.

Yours faithfully

(signed)

Jeff Carl
Chairperson
Weston Creek Community Council

PLANNING SYSTEM REFORM PROJECT

Comments by the

Weston Creek Community Council

INTRODUCTION

The Weston Creek community Council (WCCC) has been actively involved in Weston Creek as a consultation conduit for the local community since 1991. The WCCC is a non-political, voluntary lobby group representing the residents of Weston Creek and is an informed, active and pragmatic contributor to public debates in Weston Creek. Our website (www.wccc.com.au) has further details about the WCCC.

The following comments on the Planning System Reform Project are based on those previously received from the community on planning issues and feedback on the proposed reforms. The complexity of the documents released to support the proposed reforms has meant that only general comment has been received from our community to date. However, members of the WCCC Committee have closely scrutinised the Directions Paper and each of the four Technical Papers. Our comments on the proposed reforms to the ACT planning system are therefore a combination of the general comments and the Committee's understanding of the complex material contained in the Reform project's supporting documentation.

BACKGROUND

The Planning System Reform Project was an overdue and welcome review of the ACT planning system. The WCCC Committee considers that, if (and when) implemented, it will achieve the Government's commitment to make the planning system simpler, faster and more effective, thereby bringing it, seemingly, to the fore-front of 'best-practice' in Australia.

The WCCC Committee recognizes that a huge effort will be required of the ACT Planning and Land Authority (ACTPLA) to implement all of the recommendations. There must be some question, then, about whether ACTPLA will be adequately resourced (in both financial and human resource terms) in order to implement the recommendations while maintaining, or improving the current level of performance. If additional resources are to be provided, the Government will need to assess the likely return on investment of some of the mooted reforms (in what is a comparatively small jurisdiction) and assess an ACTPLA business case for proceeding.

Given that many items (such as 'material interest') are yet to be defined, there is also a level of 'trust us' involved in agreeing to the recommendations at this point. In particular the recommended removal of community consultation in many areas or its replacement with 'engaging the community', a phrase for which a definition needs to be agreed.

Other general comments are made below followed by comment against each recommendation.

GENERAL COMMENTS

The need for this to be a living document to keep pace with change is acknowledged and agreed. However this does require timelines for review as suggested against several recommendations.

The emphasis on better outcomes not just processing applications is welcomed.

Quality Design

The WCCC Committee would like to see more visionary architecture as per that of Oscar Neimeyer in Brazilia. This review proposes a good tidy up but nothing inspirational in the area of quality design.

The ongoing debate about the extent to which design merit can be assessed objectively as opposed to subjectively is acknowledged as is the progress has been made towards identifying objective measures of design. The door needs to be left ajar for advances in this area and objective issues concerning design could be incorporated into the planning process.

Volume of work and timing

A great deal of work for ACTPLA – do they have the resources, how long will it take, scheduling i.e. what comes first.

Will the proposals all be in place before next election? Will a new government start again?

Use of discretion in the past has meant uncertainty for the applicant, more work for ACTPLA and staff who were not quite sure when they could make a decision.

Communication

Greater communication may offset less community consultation but the balance is being set. If this balance proves to be inappropriate provision needs to be made for it to be addressed at a later date

“Communication” is now called ‘engaging the community’ – note that ACTPLA propose engaging the community early in the planning process and providing appropriate safeguards for members of the community most directly affected by policy change and development applications.

It is important to clearly identify the point at which a development becomes a public, tracked and consulted matter;

“Communication”– needs to be accessible and obvious not hidden away in corner of *The Canberra Times* or other local newspaper.

The WCCC Committee is pleased to note proposed provision of information on future urban zones

There is concern about community disenfranchisement in regard to Master/Neighbourhood Plans and community value statements. See comments against recommendation.

Structure

Clearer structure – like relationship of plan to codes comment *'streamlined and clearer hierarchy of planning rules'*

Like suggested linkages to NCPA 'guidelines'

Interlinked Holistic nature of the proposal i.e linking four priority areas of Territory Plan instruments, development assessment system, EIS, leasehold system. This linking needs to be emphasised

Processes

The further upstream the decision is made then less conflict and more certainty. We should not set a regime in place where decisions are made downstream.

Regular monitoring should be built into operating procedures with benchmarks such as an acceptable level of amended applications. If the range is exceeded then a review should be carried out to examine both guidelines and procedures.

Code

Relationship to design quality ? We understand the aim to balance flexibility, to give quality of opportunity, with certainty for the developer. However clear guidelines are needed to deal with unforeseen circumstances which are sure to arise.

Need to respond to local conditions.

The comment that the code *'Very important as once in place can't readily change'* is seen as important to give certainty to building industry but if any part is causing ambiguous or difficult to operate need a process for changing.

Compliance

Where this is required it shouldn't be a toothless tiger without penalties.
e.g. certifiers failing to notify of non-complying building

LEASEHOLD SYSTEM

Recommendations

- **Improving knowledge**
 - Educating the community – *great but how to do*
 - Land Custodian map – *excellent*
 - On-line access – *great*

- **Relationship of lease and Territory Plan**
The proposal to ensure that all leases are granted using the one mechanism and that management of un-leased land is also covered by the one framework is to be commended.
 - Lease as mechanism to remain – *good is basis to whole land tenure system in ACT and is too basic to change.*
 - Inclusion of use specification, intensity allowable consistent with TP – *good*
 - proposal for ‘use’ to be an assessable element of a DA – *good is up front, clearer and combines 2 elements*

- **Lease Purpose Clause**
 - list permitted uses – *good*
 - Requirement for specific facility – *good*
 - Larger range of permitted uses – *good cuts down on lease variations*
 - Statement of permitted intensity – *good providing takes into account physical restrictions e.g. slope and effect on surrounding occupiers*

- **Grants of leases**
 - One provision for grant of leases – *good simplifies things*
 - Time holding lease – *OK as long as is a reasonable period and allow time for public consultation*
 - Failure to lodge within time limit – *good, this should be clear cut not subject to negotiation*
 - Develop criteria for short term leases – *why do we need them? Examples please.*

- **Direct Grant of leases**
 - Review criteria and make public – *Excellent gives as it gives transparency*
 - Make changes public – *great*
 - One agency to grants – *great*
 - No right to apply for lease variation in 1st 5 years – *not sure, assume there will still be change of use charges. Needs to be sure of connection to Change of Use Charges. Community feels strongly about organisations granted land at ‘discount price’ and then profiting from this land that was usually supposed to be for a community use.*

- **Change of use**
 - Amend Land Act – *see previous comment re intensity of use and impact on surrounding areas, extra information unless it can be a basis for refusal of the DA*
 - Review re-grant process – *no comment until proposal considered but please note community concern*
 - Register of charges – *note that it says adding a use not a change, could there be an incremental adding of uses so that the total then becomes inappropriate.*

- **Improving Compliance**
 - Complaints system – *OK long overdue*
 - Review list of controlled activities – *simplification of definition of the activities would help*
 - Review definition of development – *community would appreciate an opportunity to comment on proposed.*

TERRITORY PLAN AND OTHER PLANNING INSTRUMENTS

Recommendations

- **Strategic Planning**

Sustainable development principles into Planning Strategy

 - *good Suggest that sustainability can be encouraged by the use of both the carrot and the stick. The carrot being economic encouragement and the stick being penalties such as higher water rates for non compliance*
 - Spatial Plan strategic principles into Planning Strategy –*good*
 - Reference to matters of regional and national significance – *good*
 - Planning Strategy only to be taken into account only in variations to TP not for DA's – *no change*
 - Review of sustainable statements – *good but also need provision for further review, unless incorporated might not be done.*
 - Integration of TP and NCP – *great if it happens*
- **Land Use Policies Areas (Zones)**

The proposal that all zoning requirements be specified by a Territory Plan that will constitute a warrantee-ed living document and whose legislative basis will not be the plan itself but rather a 'beefed up' Land Act is welcomed.

 - Use Zone instead - *good, simpler people from interstate understand this terminology. Information must be easy to access*
 - Review zone structure possible reduction – *reserve comment until proposal known, expect community consultation but generally simplification could result in easier use.*
 - Identify future urban zones – *gives certainty, good*
 - Principles and policies for urban zones readily available – *good*
 - Separate study into options for review of principles and policies – *good*
 - Principles and policies should be added to consideration of estate plans – *good*
 - Precinct codes incorporate be recognised as matters for consideration in assessment of DAs – *“consideration” is a very nebulous word what it means in the assessment needs to be clearer. This type of nebulous statement has been a problem in the past for ACTPLA*

- **Use and Development**
 - Use and Development plan incorporated into territory Plan – *good*
 - Five development tracks – *‘exempt’ good in principle but could be the thin end of the wedge unless remains restricted to Greenfield sites. Review required after a reasonable period – perhaps a year. The impact of a building can vary greatly depending on individual sites so code needs to be fairly tight. In established areas even a deck or pergola could result in overshadowing or overlooking so clear definitions are needed.*
NOTE – community has expressed some concern about this category
 - Use tables in Territory Plan – *good gives clarity*
 - Approval of variations to leases as DA’s – *good, one process*

- **Planning rules and Guidelines**
 - only retaining some in Territory Plan – *good*
 - Transfer planning rules in to codes or guidelines – *good*
 - Prepare templates to achieve consistency – *fantastic it will contribute to good communication*
 - Comprehensive review of planning rules – *good but will ACTPLA have the resources as it needs to be a thorough job.*
 - Codes and guidelines become primary documents for DA’s – *good, this will be a lot clearer.*
 - Transfer of provision for amendment to guidelines – *good*
 - Delete references to L and D conditions – *query could this provide a back door for speculation if ‘timing’ is a development condition*

- **Master and Neighbourhood Plans**
 - Master plans not a concern in DA consideration.
Should be a vehicle for policy development with community consultation – *this means that consultation will only be in regard to policy/variations, revised guidelines which the ordinary resident is unlikely to understand or be interested in. When a community becomes involved in a master or neighbourhood plan they expect it to be implemented/applied to what is built in that neighbourhood. Please re-think as this removes the community's voice in their major area of concern.*
 - Neighbourhood Plans not of concern in DA’s– *see above*
 - Review of role and status of Community Value statements – *if these are only to be given status in policy development they cease to be related to the community’s geographic area of concern. They will require a lot of work with no certainty of outcome for the community. This could cause increased friction as the community will regard it as fruitless effort.*

- **Recommendations about role of Assembly**
 - Minister to decide on referral of variation of TP to Assembly - *no comment*
 - Limit time for committee to report on a variation to be limited - *good*
 - Consider range of minor variations that can be abridged – *yes but take into consideration consultation with community before putting in place*

- Give Committee discretion not to report to LA – *too wide a power – NO*
- **Other recommendations**
 - Locating subsidiary documents in Land Act rather than TP - *good*
 - Investigate a warranty of currency – *good*
 - Separate comprehensive review of Definitions in TP - *essential but workload query.*

DEVELOPMENT ASSESSMENT SYSTEM

Recommendations

- **Objective rules**
 - Review of Planning rules assess opportunities to convert Policy into rules – *the focus on an outcome based approach is good but would like some consideration of a dual quantitative/qualitative approach*
- **DAF model assessment track**

The use of DA tracks is not a bad way forward. Care will need to be taken to ensure that it doesn't result in 'more communication and less consultation'. The outcomes generated from application of the 'exempt' track will need to be monitored and or audited closely. The monitoring and or auditing costs might be greater than not having an exempt track.

 - Amend Land Act to identify assessment tracks – *good*
 - Self assess track for non-exempt DA's should. – *This seems to be saying with double negatives that assessors could be used for non-exempt DA's. Concerned about this and requires further clarification and consultation*
 - Desirability of aligning admin structures with DAF tracks – *possible saving in staff? Training? Progression for staff? Need for further consideration, alternative structures?*
 - Review of planning rules to determine assessment track – *good in principle. Would like consultation before finalisation*
 - Application of tracks to be set out in regulations in Land Act and TP. Updated from time to time – *OK but a timeframe should be set for updating not just time-to-time.*
 - Remove requirement for single dwellings in greenfield sites + small, structures elsewhere to obtain DA – *Assume that compliance will take place of DA, What does a certifier do if he thinks is not exempt? Certifiers should be audited. What quality assurance mechanisms will be in place?*
 - DAF track to be well publicised – *see general comment*

- **Pre-Application steps**

At the moment, while a developer can keep ACTPLA informed of a likely development, the consultation process doesn't really click-in until the point at which a development application is lodged. Pre-application consultation has the potential to save a developer huge amounts of money.

- Monitor pre-application process – *good, timeframe is an issue, contradictory advice can be a problem*
- Update publications – *good, set timeframes.*
- Use of certification – *in principle what is done in other jurisdictions seems a step forward, in particular completeness of documents and consultation with other agencies. Meeting requirement of planning rules depends on the planning rules being clear.*
- Ability to refuse applications with insufficient information – *agree*
- Preliminary approvals – *dubious about this as could cause problems with final approval if any misunderstanding or alteration to documents.*

- **Application and assessment of DA's**

- Stop the clock mechanism – *Should be rigorously applied to assist both ACTPLA and applicant. The whole emphasis should be on getting it right the first time. Consider also having a windback process so that there isn't a discussion fest to encourage getting it right first time.*
- Amend Land Act to allow stop countdown – *good*
- Amend Land Act to give discretion to waive re-notification – *how do you measure what is of benefit to third parties, they make take a different view*
- No further application if amendments are minor – *who decides what is minor, it needs a better definition, again emphasis on getting right the first time.*

- **Improve processing of DAs**

- Review guidelines – *user friendly is essential*
- Clearly identify relevant material – *good*
- Review checklists – *good, suggest trialling them extensively on the community*

- **Government referrals of DAs**

- Only refer matters directly related – *good note it includes off site impacts*
- Refer to agencies only if Land Act directs – *good*
- If advice already obtained don't refer – *good*
- Set period for agency to respond including provision for stop clock – *good*
- Land Act continue to direct ACTPLA to consider but not necessarily accept advice – *would like to see a bit stronger but appreciate political considerations. Suggest should be on a wider legislative basis and not a case by case process. This confirms ACTPLA as a one stop shop*
- Amend Land Act to direct an agency to provide binding advice about any licence or permit – *crucial*

- Agencies to set out documents required and criteria for assessment – *crucial*
- **Improve community consultation on Planning policies and objectives** (*see general comments at beginning of document*)
 - Assess need for standard practices for community engagement in policy development – *this needs doing ASAP but at this level it is likely that a majority of the general community will not become involved as individuals but only through bodies such as the Community Councils. On the whole people only get involved when it affects them. This means that they have to be convinced that they may be affected – not an easy task.*
 - Guidelines and procedures to encourage proponents to consult early with neighbours – *should say strongly urge*
 - Land Act regulations to say what DA’s need to be notified – *no change*
 - Review public notification and consider appropriate methods of notification – *No ‘hidden methods’ please, readily seen, use various methods including signs on sites. Essential that people likely to be affected are notified directly.*
 - Amend ACT so that commercial interest not a reason to appeal – *strongly in favour*
 - Amend Act to waive public notification for a lease variation where can have no significant 3rd party effects – *who judges what is significant? Definition?*
 - Notification methods to be assessed – *essential*
 - A standard form for making representation – *very good some examples on the form would be helpful*
 - Remove distinction between submissions and objections, instead have representations – *Very good, people would feel less like they are complaining but just presenting their views*

- **Third party appeals**

The desire to restrict right of appeal to those who have a material interest in a particular DA is welcomed also. This will propel ‘social interest’ back into the political domain / plan formation stage where it belongs

- Review matters that may give rise to 3rd party appeals so only applies to Merit and Impact Assessments – *this simplifies and possibly shortens process, community may have a problem with this concept as they often want a last chance to ‘object even when it is a small-scale development. In particular they may want to object in the case of a dual occupancy even if it fully complies with the code. Suggest a second look at this one. An example may be a dual occupancy with a driveway into a small cul-de-sac with very limited parking spaces for visitors*
Suggest consideration of a sole reason being ‘having a material interest’ as per later point
- Only DAs that have significant off-site impact in residential areas be open to third party appeals – *A definition is needed*
- 3rd party appeals only to those who are materially affected and make representation at assessment stage – *OK if owners are notified appropriately. What if owner overseas and cant make representation at assessment?*

- No appeal on commercial grounds – *good*

- **Integrate BA and DA services**

- Examine potential for standards and guidelines to facilitate certifiers to check and submit DAs – *there are issues behind this issue such as the quality and integrity of the certifiers, quality could be compromised. Needs very careful consideration*
- Develop an internet facility for combined access to plans
- *good*

- **Compliance**

Tightening provisions governing compliance are good although if no absolute stringency can be, or is to be, observed then frequent and transparent reporting (feedback to community and parliament) should be provided for. This would allow progressive objective refinement of the plan in order to avoid such issues in the future.

- Certifiers to notify within 1 day of work not complying with approval – *good, penalties if not done?*
- Amend Act to require a DA where building doesn't comply with existing approval – *good, the community does not like builders 'getting away with it' meaning that they do not build to plans and there is no penalty*
- Permit certifiers to assess compliance with DA for prescribed developments – *what are the prescribed developments, integrity of certifiers and audit*
- Risk management principles for complaints– strategies needed as well + audit
- Assess need for DA approval to apply after cert of occupancy issued – *a need is already established but period is the issue*
- Concurrent processing of lease compliance and occupancy certificates – *good*
- ACTPLA given authority to withhold plans until conditions satisfied – *great*
- Allow regularisation of unlawful building work – *Yes if it means the building is rectified or demolished, No if it means it is given the OK as is just because it exists*
- Prevention of exploitation of regularisation powers by
 - requiring demolition in some circumstances – **yes**
 - require a caveat – **no tantamount to approval**
 - order testing of building to determine compliance - **yes**