



Weston Creek Community Council Comments for the:

**CONSULTATION DRAFT
(Prepared by Parliamentary Counsel's Office)
Planning Bill 2022**

Submissions close Wednesday 15 June 2022

Your local voice



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ABOUT WESTON CREEK COMMUNITY COUNCIL (WCCC)

Weston Creek Community Council (WCCC) appreciates the opportunity to comment on the Draft Planning Bill.

As a Community Council we are committed to advocating and supporting the Weston Creek residents in pursuing the expectations and values that enhance and ensure their safety, well-being, and quality lifestyles. The community of Weston Creek value their unique village atmosphere, garden landscapes, and open green spaces as vital links to physical and mental well-being. Planning and development, climate change, and Government distribution of amenities and resources are topics of high interest in Weston Creek. With the increasing population growth of Canberra and what appears to be a history of ill-considered planning and development, Council is of the opinion that the unique character so appreciated by residents is at great risk of being lost.

SUMMARY

Weston Creek Community Council does not support the draft Planning Bill in its current form because:

- Of the **many probity and governance risks presented**. There is a lack of scrutiny with poorly directed Government oversight.
 - Discretionary powers of the Chief Planner
 - Process of Territory Priority Projects
 - Over-reliance on Notifiable Instruments
- **Lack of decision-making and assessment criteria**. Council suggests that the Bill be codified, with this explicitly written into the Bill with greater emphasis of the human impact.
- **Vagueness and lack of clarity**
 - There is no definition of *Design Principles*
 - There is no definition of *Good Consultation*
 - Inconsistent use of *may* and *should* language within the Bill. For example: District Plans *may* be developed. The language within the Bill needs to be consistent and in alignment with community expectations.
- Concerns of **potential poor outcomes due to outcomes-focused planning**. Without clear criteria, outcomes-focused does not ensure quality planning and development.
- Although the *South Australia Planning, Development and Infrastructure Act 2016* has been touted as a guide, the **valuable guidance have not been incorporated** into the ACT Planning Bill and hence transparency and accountability have been lost.

"The current draft is poorly structured and all over the place and needs a lot of work."

Weston Creek resident.

INTRODUCTION

Council acknowledges and supports the Government's vision to review the current Planning Act. However, for true reform **Council suggests that two Acts are required, a Planning Policy Act and a Planning Administration Act.** Council notes the aspirations of the review including:

- offering a system that is accessible, easy to navigate and encourages participation in planning (unfortunately this has not been met in the draft)
- Supporting the wellbeing of residents and protecting the natural environment are vital and agreed upon goals (however, the human factor needs greater emphasis in the Bill)
- Council also agrees that the current legislation (the Planning and Development Act 2007), has grown complex and cumbersome as changes have been added in a piecemeal way over time
- Council supports the inclusion of planning principles of inter-generational equity and precautionary principles.

However, without greater clarity and detail to the Act, Council concerns remain, including:

- Although the draft Bill is easier to read and navigate, Council is not convinced that it encourages broad participation in planning or that it will achieve quality development
- An outcomes-focussed Planning Bill that does not define *good* planning and design, or provide any clear assessment criteria, cannot be considered a key tool that in any way will successfully address the goal aspirations or provide much needed planning reform
- Council believes the vagueness of the draft Planning Bill will potentially deliver poor planning and development outcomes
- Protection of ecological processes including air, soil, and water important but the enduring impact on residents needs to be embedded in the Act.

Sweeping statements have been made of the significance of the key changes to the draft Bill and its ability to be fit for purpose. For example:

- putting people at the heart of the planning system by focussing on liveability, prosperity, and the wellbeing of all Canberrans – it doesn't
- being a great opportunity to build a planning system that promotes great planning, design and development outcomes for Canberra and the community – it doesn't
- supporting a transparent reformed planning system - it doesn't

"That when planning approval is being sought that all necessary areas of regulation are consulted, and the results of that consultation are included in the decision."

Dissatisfied home owner.

"Further down the planning system is this question of standards and timeliness. Standards because they need to be enforced within a reasonable period and not be included as in this case as one reason for someone moving house!"

Concerned neighbour.

"... this has created what we might call a weak regulatory environment...makes me wonder if there is anything in that document that actually means what it says. And I also wonder how this benefits the majority of people who do the right thing and self-regulate their behaviour".

Resident comment to Council.

Weston Creek Community Council provides the following comments and recommendations against the Chapters of the draft Bill for consideration.

CHAPTER 2: OBJECTS, PRINCIPLES, IMPORTANT CONCEPTS, AND ELEMENTS.

Has the working party considered two Acts? With the aims of minimising complexity and maximising the opportunity for the elected members of the Assembly to scrutinise the planning laws, Council offers an alternative model of review and planning reform to truly reflect contemporary practice:

- **A Planning Policy Act** setting the scene of governance arrangements, appointments, and assurances, and
- **A Planning Administration Act** detailing how the Assembly wishes the policy to be administered. Council would suggest that the compliance and enforcement functions would sit in this Act.

Within this Chapter, there needs to be an additional focus on the clear and accountable roles and responsibilities of any planning authority as well as providing details of what the applicant can expect with the planning process. Any guidelines must provide clarity, accessibility, respect, inclusivity, timeliness, proportionality, as well as representation.

Providing unspecified statements (*setting up an outcomes-focused system* and stating *principles of good planning*) without any assessment criteria or detailed description within the Draft Planning Bill is providing an open slather style of planning with the potential for the delivery of poor outcomes. While these statements appear to offer a commitment to quality planning and development, there is no provision of supporting criteria throughout the Bill to instil any community confidence. Also, alternating wording between *should* and *must* throughout the Bill is inconsistent and could be open to interpretation.

Council notes that under the South Australian model, The *SA Planning, Development and Infrastructure Act 2016*, that there is greater specificity and a higher level of community participation considered. This model, which it is understood was used as guide to the ACT Review, provides guidance that appear to have been ignored in the ACT Draft Bill. Council recommends the inclusion of an additional chapter after the drafted Chapter 3 to be specifically about **community consultation, engagement, participation, and information sharing**.

Instruments that Council suggests being reconsidered for inclusion in the Act, include a:

- **Charter** to guide public participation in the preparation and amendment of designated policies, strategies, and schemes, including mandatory requirements:
 - Actions that must be included in any engagement plans
 - A set of principles which guide engagement
 - Performance outcomes you would see from successful engagement.
 - Types of measures for measuring performance.
- **Planning and Design Code** that:
 - sets out a comprehensive set of policies, rules and classifications which may be selected and applied
 - provides for other matters envisaged by the Act, and regulations made under the Act.

With reference to the South Australian Planning Act, it is recommended that the following **principles of good planning** be explicitly stated in the ACT's Planning Act:

- policy frameworks should be based around long-term priorities, be ecologically sound, and seek to promote equity between present and future generations
- policy frameworks should be informed by monitoring, benchmarking, and evaluation programs
- the encroachment of urban areas on areas of rural, landscape or environmental significance is to be avoided

With reference to the South Australian Planning Act, it is recommended that the following **high quality design principles** be explicitly stated in the ACT's Planning Act:

- development should be designed to reflect local setting and context, to have a distinctive identity that responds to the existing character of its locality, and to strike a balance between built form, infrastructure, and public realm
- built form should be durable, designed to be adaptive (including in relation to the reuse of buildings or parts of buildings) and compatible with relevant public realm
- public realm should be designed to be used, accessible, and appropriately landscaped and vegetated
- built form and the public realm should be designed to be inclusive and accessible to people with differing needs and capabilities
- the Territory should be planned and designed and developed to:
 - be well-connected in ways that facilitate the safe, secure, and effective movement of people within and through them
 - to support active and healthy lifestyles and to cater for a diverse range of cultural and social activities
 - to be sustainable with focus on achieving energy efficient urban environments that address the implications of climate change

RECOMMENDATIONS:

- A true review and reform resulting in 2 Acts: A Planning Policy Act and a Planning Administration Act
- The inclusion of an additional Chapter concerned with community consultation, engagement, participation, and information sharing
- Assessment criteria needs to be codified and explicit within the Planning Act.
- Wording *should* be replaced with wording of *must* consistently through the Bill
- With the principles of good consultation, Council is of the view that the Minister *must* (not *may*) make guidelines about good consultation. Community consultation must be mandated.
- Inclusion of a Charter and a Planning and Design Code to guide public participation
- Greater emphasis on the human condition of environmental impacts to be included. For example: Addition of air and light pollution to the conservation principles (2.2. section 9).

CHAPTER 3: TERRITORY PLANNING AUTHORITY AND CHIEF PLANNER

Due to the structure of the ACT Government without local government or councils, there is limited scrutiny. Council recommends the addition of a **Planning and Development Advisory Representative Board** be added at Part 3.1.13. This Board would be convened, with a substantive agenda, to provide strategic advice to the Minister, the Standing Legislative Assembly Committee, and the Territory Planning Authority (including the Chief Planner). The governance of the South Australian model would appear to provide an appropriate template. It could be expected that this Board would:

- scrutinise and advise on policies that are consistent with the schemes established by this Act
- cooperate with any person or body involved in the administration of this Act
- Advise on any failure by a body or agency to comply with the requirements of the Act
- Be comprised of suitable qualified, knowledgeable, and/or experienced persons

Council notes that the Chief Planner is the Territory Planning Authority, and an appointment must be for a term not longer than 5 years (3.4 23). Ministerial directions should be made with caution. It is noted that the direction is a notifiable instrument. Council is of the opinion that this is an unbalanced position and is open for misuse.

Additionally, a code of conduct and responsibilities on these roles be more explicit in this chapter. Additions for example could include, but not limited to:

- act in a cooperative and constructive way, exercising professional care and diligence
- be honest, impartial, and open in interacting with other entities under this Act
- be prepared to find reasonable solutions to issues that affect other interested parties or third parties

RECOMMENDATIONS:

- The formation of a Planning and Development Advisory Representative Board
- Add explicit criteria for any Ministerial directions
- Anti-corruption provisions be included
- Clarify if an individual can have repeat terms of appointment
- Ministerial directions be a disallowable instrument not a notifiable instrument to allow the Assembly five days to move and debate the direction.

SUGGESTION: ADDITIONAL CHAPTER TO BE INCLUDED IN THE PLANNING ACT COMMUNITY CONSULTATION, ENGAGEMENT, PARTICIPATION, AND INFORMATION SHARING. (Adopted from the SA Act)

Council makes the following suggestions for inclusion in the Planning Act:

- There must be a community consultation charter.
- The suggested Planning and Development Advisory Representative Board would be responsible for establishing and maintaining the charter.

- The following principles must be taken into account in relation to the preparation (or amendment) of the charter:
 - members of the community should have reasonable, timely, meaningful, and ongoing opportunities to gain access to information about proposals to introduce or change planning policies and to participate in relevant planning processes
 - community engagement should be weighted towards engagement at an early stage
 - information about planning issues should be in plain language, readily accessible and in a form that facilitates community participation
 - participation methods should seek to foster and encourage constructive dialogue, discussion, and debate in relation to the development of relevant policies and strategies
 - insofar as is reasonable, communities should be provided with reasons for decisions associated with the development of planning policy (including how community views have been taken into account).

- The charter will set out principles and performance outcomes

- The charter will provide guidance on specific measures or techniques by which the outcomes may be achieved and set out measures to help evaluate whether, and to what degree, the outcomes have been achieved.

- The Minister must ensure that an up-to-date copy of the charter is published on the ACT Government website and be publicly available for inspection and downloading without charge.

- Historical as well as current versions of documents, instruments or materials are to be publicly available

- Provision must be made that enables members of the community to make submissions and provide feedback

- Provision of a facility that allows members of the public to be notified directly about specified classes of matters or issues that are of interest to them

- Publishing of matters determined by the suggested Planning and Development Advisory Representative Board

CHAPTER 4: STRATEGIC AND SPATIAL PLANNING

If District Strategies are to replace Master Plans, there is community concerns of the lack of emphasis of this section. District Plans that are well developed with extensive community

consultation will value and uphold the unique character of the districts of Canberra. With the chronic delays of action on the existing plans, community trust has been eroded.

There are significant impacts on residents of any infill, densification and/or urban developments in both their local and adjoining locations. Estate development plans can completely change the character of an area if not carefully considered. The human impact is huge.

RECOMMENDATIONS:

- Amend: 37(1) to The Executive *must* make a plan for the district
- Add: district strategies are developed in consultation with the community to enhance the character of the area aligned with the aspirations of residents
- Estate development plans to include considerations of:
 - Character of the local area
 - Desires of the residents of adjoining suburbs
 - Impacts on the amenities of neighbouring shops and amenities
- Clarity around the aspects that are mandated not optional
- What is the timeline?
- At what point are plans required?
- Add: Waste management, air quality and dust plans

CHAPTER 5: TERRITORY PLAN

Council acknowledges statements of principles of good planning but is concerned about the lack of any substance to explain to the reader any detail or explanation.

The Bill appears to have an inconsistent approach to District Strategies. Again, Council notes the diminishing commitment to District plans. See:

*Before taking action under subsection (2), the Executive must consider the following:
(a) the planning strategy; (b) district strategies (if any).*

For the purposes of consistency, governance and probity, Council argues that, when reviewed, the Territory Plan have a process as adopted with the National Capital Plan. Alternatively, the Territory Plan could be legislated. That is, it becomes a statutory law of the Territory, as opposed to a notification by the relevant Minister of the time.

Of great concern is the *laissez faire* attitude to estate developments particularly on the delayed provision of services to the estate development and hence the detrimental impacts on neighbouring areas. Services such as shops and community amenities must be mandated for inclusion in the proposed development of the estate with a binding timeline of construction aligning when residents first move into the area.

RECOMMENDATIONS:

- Delete *if any* in relation to district strategies 49 (3)b
- That the Territory Plan have a process as adopted with the National Capital Plan. Alternatively, the Territory Plan could be legislated
- In the draft Bill, a major plan amendment approved under subsection (2) (a) is a notifiable instrument, it is suggested that this be changed to disallowable instrument
- An estate development plan must identify what and when community services, and amenities such as shops, are to be constructed, and be binding
- That a proposed estate on existing rural land first go to extensive community consultation
- Estate development plans are mandated (*not may*), to include the tree management
- Additionally, estate development plan must include environmental and human impact studies

CHAPTER 6: SIGNIFICANT DEVELOPMENT

Community consultation appears to have been greatly reduced throughout the draft Bill. The establishment of a Design Review Panel is noted. Council also questions why environmental impacts (Part 6.3) are only a guide for readers. More time needs to be allocated for community consultation and feedback regarding significant developments. Developments are assessed against the requirements of the Territory Plan. The overarching concern here is that the Territory Plan is going to be shortly reviewed and it is therefore made difficult to comment.

Council has concerns of the low levels of governance and scrutiny. The suggested formation of a Planning and Development Advisory Representative Board would assist with this.

RECOMMENDATIONS:

- Increase emphasis of community consultation by including community representation on the Design Review Panel
- That the Design Review Panel be in addition to pre-consultation processes and not instead of that process
- The scope of environmental impacts on humans be strengthened and to include the impacts of climate change, for example heat sink islands.

CHAPTER 7: DEVELOPMENT ASSESSMENT AND APPROVALS

Assessment criteria needs to be codified and explicit within the Planning Act. It is of great concern to Council that no effort has been made to specify how good judgements are made and how one can appeal something that does not have its origin against clear criteria.

Again, Council notes that community consultation appears to have been greatly reduced throughout the draft Bill.

The policy arguments for the assigned roles of the decision maker are unclear in development applications and approvals (Chapter 7.140). For clear governance this needs to be articulated.

Lacking throughout the draft Bill is deep consideration of the human factor. Well-being frameworks are of little value if the human condition is not transparent within the Bill. Clear considerations need to be given to impacts of climate change on the environment, fauna, flora, and humankind. Council does not support the inclusion in Section 186 (2):

that the chief planner may approve a development application if— (a) the application is for a significant development that is likely to have a significant adverse environmental impact on a declared protected matter; and (b) the proposal is inconsistent with the advice of the conservator of flora and fauna mentioned in section 184 (1) (c) in relation to the protected matter; and (c) the chief planner is satisfied that the proposal— (i) is consistent with the offsets policy; and (ii) would provide a substantial public benefit.

RECOMMENDATIONS:

- Codify assessment criteria
- Explicitly state the criteria used for pre-decision advice
- Maintain pre-consultation guidelines with some minor amendments
 - Increase time of pre-consultation
 - Disallow pre-consultation that is limited to the Christmas, Easter, holiday periods, or times of significant cultural significance
- Define essential design elements
- Increase emphasis of community consultation
- Add to (181) considerations: the extent and significance of probable impacts on the environment, fauna, flora, and humankind.
- Amend Section 186 (2).

CHAPTER 8: TERRITORY PRIORITY PROJECTS

Sufficient community consultation must be mandated. 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
- a territory priority project declaration as a notifiable instrument.

RECOMMENDATIONS:

- Increase emphasis of community consultation
- Increase consultation period from 15 days with a provision noting extended holiday periods
- That a Planning and Development Advisory Representative Board, as previously suggested in this submission, consider all proposals for territory priority projects
- Priority projects to not be exempt from ACAT, alternatively
- a territory priority project declaration to be a disallowable instrument not a notifiable instrument.

CHAPTER 9: OFFSETS

For the purposes of good governance and probity, Council does not support:

- the initial offsets policy being a notifiable instrument (219.2).
- the offsets policy guidelines being a notifiable instrument (227.2).

Explanation as to why the offset management reporting (246) is not part of the ACT Annual Report would be appreciated.

RECOMMENDATIONS:

- That the initial offsets policy, offset policy guidelines and the offset value calculation determination are all defined by a disallowable instrument
- That the offset management plan reporting is part of the Annual Report

CHAPTER 10: LEASES AND LICENCES

The current urban development and population expansion of the ACT, combined with the present land lease arrangement, may suggest a need for a review of this process.

Council notes the formula of removing a concessional lease and that a concessional lease guideline is a notifiable instrument. Council does not agree.

Variation of leases and amendments have become problematic in the ACT. With the deletion of the pre-consultation process, community awareness of, consultation with and feedback of any such changes could be diminished.

RECOMMENDATIONS:

- 297 (3) A concessional lease guideline be a disallowable instrument
- Review of the land lease arrangement in the ACT
- A working example of the formula of the removing of a concessional lease to enhance the reader's understanding
- A pre-consultation process be included for any lease variation or amendment.

CHAPTER 11: PUBLIC LAND

Council supports the following:

- (387) A determination of management objectives is a disallowable instrument.
- (395) A land management plan is a disallowable instrument.

Without clarification and extensive community consultation, Council Does not support the variation of public land or the recommendation to the territory planning authority to amend the Territory Plan. Amendments about 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. For the health and well-being of residents, these lands should be protected and

maintained. Note these areas include: wilderness areas, national parks, nature reserves, catchment areas and other prescribed areas of public land. It may also include special purpose reserves, urban open spaces, cemeteries, lakes, sport and recreation reserves and heritage areas.

RECOMMENDATIONS:

- Chapter 11 to be amended with public land protections. Declared public land to retain this status and variations to be disallowed
- Public land provisions be mandated in estate development plans.

CHAPTER 12: DEVELOPMENT OFFENCES AND CONTROLLED ACTIVITIES

Development compliance and enforcement matters have been raised by the residents of Weston Creek as an area of concern. Work safety issues, non-completion, and general disruption have been raised. These matters need to be up front in the Bill for all parties including, the developer, the client, the adjoining properties and owners, and the end quality product.

If the Bill is to offer a system that is accessible, easy to navigate and encourages participation in planning, Council suggests that greater clarity is required in section 12.2 as to what constitutes a controlled activity and the mechanisms to make a complaint. Community members have advised Council that making complaints to authorities is difficult to navigate and frustrating.

(Part 12. 414 – 422). In the handling of complaints there is no mention of timeliness such as appear elsewhere in the Bill. Without a timeline there would appear to be no incentive to resolve complaints and therefore they would appear to have no influence on the progress of affected activities. Nor is there mention of any review process other than by the Territory Planning Authority itself. Most effective complaint processes have detailed review activities and sometimes include independent advisors before resorting to legal channels such as ACAT. With such an important Act, it would be reasonable to expect clear processes and independent review and scrutiny.

Council seeks review of any sections that apply to compliance and enforcement. Community concerns have been received in relation to:

- Knock down rebuilds being exempt from DA
- In a DA, what are the parameters for compliance?
- What is the process if a Building Certificate is not sought?
- Lack of enforcement in breaches of compliance
- Lengthy delays in addressing complaints, often with little, or no, resolution

RECOMMENDATIONS:

- Add to part 12.1: A person commits an offence if— (a) the person is negligent about whether the development is completed. (b) the person does not apply for or comply with occupancy certificate
- Add to part 12.2 a definition of controlled activity
- Add to part 12.2 the process of making a complaint
- (Part 12. 414 – 422). Addition of a clear timeline of complaint review
- (Part 12. 414 – 422). Addition of an independent complaints review body.

CHAPTER 13: ENFORCEMENT

Council has ongoing concerns about the application of enforcement activity by Access Canberra. Happy to discuss this at future consultation, with examples, or have a separate conversation.

CHAPTER 14: ACCESS TO INFORMATION

These are standard provisions and seem fit for purpose.

CHAPTER 15: NOTIFICATION AND REVIEW OF DECISIONS. ACAT

A general comment is that it appears the only dispute resort is ACAT. It would be reasonable to expect a step preceding this such as a dispute or complaint resolution process using trained and/or qualified personnel who have no conflict of interests and are preferably independent. ACAT can involve expensive legal support and costs and therefore it could also be viewed as a disincentive to pursuing complaints.

Of note is that Ministerial decisions are not reviewable by ACAT. Therefore, there is a “trump card” in the system that could be perceived as an avenue of poor decision making or even corruption.

In Council’s experience, the detrimental impact on third parties or body corporates is not sufficiently covered in the existing or draft Bill, in this part 15 or in schedule 6.

RECOMMENDATIONS:

- A clear process be articulated for the review of decisions
- An independent, qualified person and/or body to lead a complaint resolution process
- The inclusion of a mechanism to independently review the decisions of the Minister

CHAPTER 16 MISCELLANEOUS

Council questions the judgement of part 16.521:

521 Ministerial guidelines (1) The Minister may approve guidelines for the exercise of any power by the Minister under this Act. (2) The Minister may, but need not, consider advice from the territory planning authority before approving guidelines. (3) Guidelines are a notifiable instrument

This point covers the scenario where the Minister may have lost confidence in the Territory Planning Authority. If so, should this not lead to the Territory Planning Authority services being terminated?

RECOMMENDATIONS:

- Review part 16.521
- The Minister must consider advice from the Territory Planning Authority before approving guidelines
- Ministerial Guidelines to be made a disallowable instrument

CHAPTER 17 REPEALS

Is this how the sunset clause sought under DV369 will be addressed?

SCHEDULES

Council looks forward to reviewing and providing a commentary on the Schedules once the issues within the draft Bill are resolved.

CONCLUSION

Weston Creek Community Council has engaged with the community, through its various channels, for the process of the planning review and since the draft was released. Our position on the draft Bill can be summarised as:

- ❖ The Parliamentary and Governing Agreement contemplates a reform of the Planning arrangements. This draft Bill does not deliver true reform, just provides a reset point for the existing scheme.
- ❖ The Bill seeks to entrench the role of the bureaucracy as the prime arbiter while minimising the role of the Legislature. We understand that expert advice on the probity risks this arrangement presents has not been sought. This is entirely unacceptable!
- ❖ The over reliance on notifiable Instrument as the primary way of articulating policy settings encourages lower quality policy analysis and legislative drafting. Hence the DV 369 debacle.
- ❖ The notion suggested during consultations that the Legislative Assembly is too busy to consider planning matters in a degree of detail is rejected. Rather, the Assembly business schedule needs to be framed with Planning and land use as a key item of ongoing business.
- ❖ We suggest that the best approach would be to advance two (2) Bills for Assembly consideration: A Planning Policy Bill and a Planning Administration Bill, with the over reliance on subordinate legislation thus being abandoned.

Thank you for the opportunity to provide this input on the Planning Act Review, Consultation Draft Bill. As an active community group, we look forward to participating in any future discussions.

As a priority, Weston Creek Community Council has broadened the areas and fields of its community consultation to best express the views of a wide range of groups. We believe that our consistent and ongoing consultation with the community through our surveys, public meetings (which are also available digitally), social media presence, newsletters and projects have proven to be valuable avenues of people being able to have their say, be listened to and be involved in decision making. We reiterate our open invitation to Government Ministers to address the Weston Creek Community Council at public meetings.

Yours sincerely

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